

1 Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
2 Edwin Kamarzarian (SBN 332118)
MOON & YANG, APC
3 1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
4 Telephone: (213) 232-3128
Facsimile: (213) 232-3125
5 E-mail: kane.moon@moonyanglaw.com
E-mail: allen.feghali@moonyanglaw.com
6 E-mail: edwin.kamarzarian@moonyanglaw.com

7 *Attorneys for Plaintiff Howard Drews*

8 Larry M. Kazanjian, SBN: 071441
Michael C. Hopkins, SBN: 328995
9 PALMER KAZANJIAN WOHL HODSON LLP
2277 Fair Oaks Boulevard, Suite 455
10 Sacramento, CA 95825
Telephone: (916) 442-3552
11 Facsimile: (916) 640-1521

12 *Attorneys for Defendant Tuff Shed, Inc.*

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SACRAMENTO**
16
17

18 HOWARD DREWS, individually, and on
behalf of all others similarly situated,

19 Plaintiff,
20

21 vs.
22

23 TUFF SHED, INC., a Colorado corporation;
and DOES 1 through 10, inclusive,

24 Defendants
25
26
27
28

Case No. 34-2021-00300020

**SETTLEMENT AGREEMENT AND
RELEASE OF PAGA CLAIMS**

Complaint filed: May 3, 2021
Trial date: Not Set

1 **SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS**

2 Plaintiff HOWARD DREWS ("Plaintiff"), individually and in his capacity as a representative of
3 the State of California on behalf of other allegedly aggrieved employees, and Defendant TUFF SHED,
4 INC., a Colorado corporation ("Defendant"), hereby enter into this Settlement Agreement and Release
5 of Private Attorneys General Act of 2004 Claims ("Settlement") as follows:

6 **DEFINITIONS**

7 1. **"Action"** means and refers to *Drews v. TuffShed, Inc.*, Case No. 34-2021-00300020,
8 which is currently pending in the Sacramento County Superior Court of the State of California.

9 2. **"PAGA Settlement Members"** The PAGA Settlement Members (also referred to
10 herein as the "Aggrieved Employees") included in the Settlement shall be all past and present non-
11 exempt hourly employees of Defendant in California at any time from April 30, 2020 through the
12 date the Court approves this Settlement ("Covered Period").

13 3. **"Settled Claims"** This Settlement is a settlement of all PAGA claims identified in
14 Plaintiff's PAGA notice letter, dated April 30, 2021 ("Settled Claims").

15 4. The terms **"Agreement," "Settlement,"** and **"Settlement Agreement"** mean this
16 Settlement Agreement and Release of PAGA Claims, which the Parties acknowledge sets forth all
17 material terms and conditions of the Settlement between them, and which is subject to Court
18 approval pursuant to Section 2699(l) of the California Labor Code Private Attorneys General Act
19 of 2004, Labor Code §§ 2698, *et seq.*

20 5. **"Court"** means the California Superior Court, County of Sacramento.

21 6. **"Defendant"** means TUFF SHED, INC.

22 7. **"Effective Date"** The Effective Date of this Agreement shall be the date the Court
23 enters an order approving this Agreement.

24 8. **"PAGA Period"** shall mean April 30, 2020 to the date the settlement is approved by
25 the Court.

26 9. **"Gross Settlement Amount"** means a maximum total of \$100,000.00, which
27 includes all payments owing as a result of this Agreement and includes: the Net Settlement Amount;
28 Settlement Administration Costs; Plaintiff's service payment; and PAGA Counsel Attorneys' Fees

1 and Costs as awarded by the Court.

2 10. **"LWDA Payment"** means a payment to the California Labor Workforce and
3 Development Agency in an amount equal to 75% of the Net Settlement Amount.

4 11. **"Net Settlement Amount"** is the Gross Settlement Amount less (1) PAGA
5 Counsel's Attorneys' Fees and Costs, (2) Settlement Administration Costs, and (3) Plaintiff's
6 service payment.

7 12. **"PAGA Aggrieved Employee Payment"** means a payment of 25% of the Net
8 Settlement Amount, which the Parties have agreed to pay the Aggrieved Employees in connection
9 with the settlement of the PAGA Claim.

10 13. **"PAGA Claim"** means the claim for civil penalties under the California Labor Code
11 Private Attorneys General Act of 2004 (Cal. Lab. Code sections 2698 *et seq.*, "PAGA") alleged in
12 the Action and stated in Plaintiff's April 30, 2021 notice letter to the LWDA.

13 14. **"PAGA Counsel"** means Moon & Yang, APC.

14 15. **"Released Claims"** means all claims for relief under PAGA, of whatever kind or
15 nature, whether known or unknown, arising during the Covered Period, based on the facts alleged
16 by Plaintiff in the Action and Plaintiff's notice letter to the LWDA including, but not limited to,
17 Labor Code sections 201, 201.3, 202, 203, 204, 205.5, 210, 218, 218.6, 226, 226.3, 226.7, 246, 256,
18 510, 511, 512, 558, 558.1, 1174, 1174.5, 1175, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 2751,
19 2802, 2699, and the applicable IWC Wage Orders, and any resulting claim for attorneys' fees and
20 costs under PAGA.

21 16. **"Released Parties"** shall mean Defendant, and each of its respective current and
22 former, direct and indirect owners, parents, subsidiaries, brother-sister companies, and all other
23 affiliates and related entities, and their current and former partners, officers, directors, employees,
24 attorneys, agents, and other related parties.

25 17. **"Representative Plaintiff"** means Plaintiff Howard Drews.

26 18. **"Settlement Administrator"** shall mean ILYM Group, Inc., a neutral third-party
27 administrator chosen by the Parties, subject to approval by the Court.

28

RECITALS

19. On April 30, 2021, Plaintiff sent a PAGA Notice to the Labor Workforce and Development Agency ("LWDA"), with a copy to Defendant. On May 3, 2021, Plaintiff filed a class action complaint in the Superior Court of the State of California, County of Sacramento in a case styled *Drews v. Tuff Shed, Inc.*, Case No. 34-2021-00300020.

20. On July 6, 2021, Plaintiff filed a first amended complaint in the Action to add the PAGA Claim. On September 2, 2021, the Court entered an order dismissing the class and individual allegations without prejudice so that Plaintiff could proceed under PAGA only.

21. The PAGA Claims seek civil penalties and an award of reasonable attorneys' fees and costs.

22. The Parties have conducted a thorough investigation into the facts of the Action. This included exchanging data and information as well as documents relating to the underlying alleged violations. After attending a mediation with Michael Young, Esq. on May 23, 2022, the Parties entered into an agreement, formalized herein, which they believe is fair, reasonable, and adequate. The Parties understand, acknowledge, and agree that this Settlement Agreement constitutes a compromise of Representative Plaintiff's and the Aggrieved Employees' PAGA Claim, and that it is the desire and intention of the Parties to effect a final and complete resolution of the PAGA Claim that the Representative Plaintiff and the Aggrieved Employees have against Defendant or any persons or companies affiliated with Defendant.

23. The Parties enter into this Settlement Agreement on a conditional basis. In the event the Court does not enter a Final Order and Judgment as defined in this Settlement Agreement, this Settlement Agreement will be deemed null and void *ab initio* and will be of no force or effect whatsoever, and will not be referred to or utilized for any purpose whatsoever.

24. Defendant denies all of the claims in the Action, and does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations upon all legal, procedural and factual grounds should this Settlement Agreement not become final. This Settlement Agreement reflects a compromise reached to end litigation.

25. The Parties stipulate and agree to the following terms of this Settlement Agreement

1 with the intent that this Agreement finally disposes of the Action with prejudice.

2 **TERMS AND CONDITIONS**

3 26. **Settlement Payments and Calculation of Claims.** The following table summarizes
4 the allocation of the Gross Settlement Amount:

5 **Gross Settlement Amount of \$100,000.00 Is Broken Down As Follows:**

- 6 • PAGA Counsel Attorneys' Fees not to exceed **35% (or \$35,000.00).**
- 7 • PAGA Counsel Costs not to exceed \$15,000.00.
- 8 • Settlement Administration Costs not to exceed \$10,000.00.
- 9 • Service Award to the Plaintiff for \$7,500.00
- 10 • Approximately \$32,500.00 for the Net Settlement Amount:
 - 11 ○ 25% of the Net Settlement Amount for the PAGA Aggrieved
Employee Payment (approximately \$8,125.00)
 - 12 ○ 75% of the Net Settlement Amount for the LWDA Payment
(approximately \$24,375.00)

13 27. Subject to final Court approval and the conditions specified in this Agreement, and
14 in consideration of the mutual covenants and promises set forth in this Agreement, Defendant agrees
15 to pay the Gross Settlement Amount of \$100,000.00. The Gross Settlement Amount includes
16 payments to be made to PAGA Counsel's attorneys' fees and costs, LWDA Payment, Service
17 Award to Plaintiff for the resolution of his individual claims, and Settlement Administration Costs.

18 28. Escalator Clause: The Parties agree that as of May 23, 2022, the number of pay
19 periods worked by PAGA Settlement Members is approximately 10,000. If it is determined that the
20 number of pay periods worked by PAGA Settlement Members during the Covered Period exceeds
21 13,500 (10,000 plus 35% of 10,000), Defendant shall have the option of (1) increasing the settlement
22 amount by the percentage that the actual number of Aggrieved Employees or pay periods exceeds
23 13,500, or (2) ending the PAGA Period on the date the number of pay periods reaches 13,500.

24 29. The Parties agree, subject to Court approval, that the Gross Settlement Amount shall
25 be apportioned as follows:

26 a. **Settlement Administration Fees And Costs:** The fees and costs associated
27 with settlement administration (e.g., preparing and mailing payments to the Aggrieved Employees,
28 tax documentation, etc.) (the "**Settlement Administration Costs**") will be paid from the Gross

1 Settlement Amount and are estimated not to exceed \$10,000.00. The Parties agree to use ILYM
2 Group, Inc. as the Settlement Administrator. Any unused portion of the settlement administration
3 fees shall be distributed to the Aggrieved Employees and LWDA on a pro-rata basis.

4 b. PAGA Counsel's Attorneys' Fees and Costs: The Parties agree that, subject
5 to the Court's review and approval, PAGA Counsel will be paid from the Gross Settlement Amount
6 an amount that is up to 35% of the Gross Settlement Amount for attorneys' fees (\$35,000), plus
7 actual litigation costs), not to exceed \$15,000.00. Any unused portion of the attorneys' costs shall
8 be distributed to the Aggrieved Employees and LWDA on a pro-rata basis.

9 c. Service Award To Named Plaintiff: Subject to Court approval, Defendant
10 agrees to pay Plaintiff a Service Award of Seven Thousand Five Hundred Dollars (\$7,500.00) to be
11 paid from the Gross Settlement Amount, for his service as the PAGA representative and for the
12 release of his individual claims. Upon receipt of the Service Award, Plaintiff will be deemed to have
13 fully released and discharged Defendant and the Released Parties from any and all claims, demands,
14 obligations, causes of action, rights, or liabilities of any kind which have been or could have been
15 asserted against Defendant and the Released Parties arising out of, or relating to, Plaintiff's
16 employment with Defendant or termination thereof. This release is intended to have the broadest
17 possible effect under the law, and specifically includes any and all claims, demands, obligations
18 and/or causes of action for wages, damages, liquidated damages, benefits, fringes, equitable relief,
19 restitution, penalties, interest, and attorneys' fees and costs (except provided by the Settlement)
20 relating to or in any way connected with the matters referred to herein, whether or not known or
21 suspected to exist, and whether or not specifically or particularly described herein. Specifically,
22 Plaintiff will be deemed to have waived all rights and benefits afforded by California Civil Code
23 Section 1542, which provides:

24 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
25 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
26 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
27 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
28 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**

1 **DEBTOR OR RELEASED PARTY.**

2 Defendant will not oppose Plaintiff's request for the Service Award. Plaintiff will be
3 responsible for correctly characterizing this compensation for tax purposes and for paying any taxes
4 owing on said amount. The Parties agree that a reduction by the Court of the requested Service
5 Award is not a basis for rendering the entire Settlement voidable or unenforceable.

6 d. Plaintiff's Release of Claims. Except as otherwise provided herein, in
7 exchange for the consideration described herein, Plaintiff, on his own behalf and on behalf of his
8 descendants, dependents, heirs, executors, administrators, agents, assigns, and successors
9 (collectively, "Plaintiff's Releasors"), hereby covenants not to sue and fully and unconditionally
10 forever release and discharge Defendant, their past, present, and future representatives, directors,
11 officers, employees, agents, attorneys, affiliates, members, and shareholders, as well as all parent
12 companies, affiliated companies, subsidiary companies, affiliates, clients, client facilities,
13 consultants, agents, attorneys, predecessors, assignors, and/or assigns (collectively, "Defendant's
14 Released Parties"), from and against any and all claims, causes of action, judgments, liens, demands,
15 damages, obligations, suits, contracts, liabilities, losses, costs, and expenses, including, but not
16 limited to, attorneys' fees and disbursements, or offsets of any nature whatsoever (collectively,
17 "Claims") that Plaintiff's Releasors now have, have had, or may hereafter have against Defendant's
18 Released Parties arising out of the Parties' relationship, the cessation of this relationship, including
19 but not limited to those claims arising out of or relating to (i) Plaintiff's performance and reputation,
20 (ii) harassment, (iii) discrimination, (iv) retaliation, and (v) any Claims arising under the Title VII
21 of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act,
22 the Age Discrimination in Employment Act, the Federal Rehabilitation Act, the Employee
23 Retirement Income Security Act, the Family and Medical Leave Act, the Fair Labor Standards Act,
24 the California Fair Employment and Housing Act, the California Family Rights Act, the California
25 Labor Code, and any other applicable state or federal law which took place prior to the Effective
26 Date. Except for any rights created by this agreement, this General Release is intended to be
27 interpreted as broadly as possible and to apply to any and all claims available to Plaintiff in any
28 forum, including, but not limited to, any claims for unpaid wages, expense reimbursement, unpaid

1 penalties or premiums, liquidated damages, class or representative actions governing employment
2 (to the fullest extent allowed by applicable law), constructive termination, negligent or intentional
3 infliction of emotional distress, harassment, discrimination, wrongful termination, negligence,
4 breach of contract, breach of the covenant of good faith and fair dealing, promissory estoppel, fraud,
5 negligent or intentional misrepresentation, negligent or intentional interference with contract or
6 prospective economic advantage, unfair business practices, defamation, libel, slander, personal
7 injury; assault, battery, invasion of privacy, false imprisonment, conversion, disability benefits,
8 claims under Labor Code section 132(a), violation of any provision of federal or state law governing
9 employment, and any claim for attorneys' fees or costs. All such claims are forever barred by this
10 Agreement. However, this release shall not apply to claims for workers' compensation benefits or
11 unemployment insurance benefits or any other claims that Plaintiff cannot, by statute, lawfully
12 waive by this Agreement.

13 e. Net Settlement Amount: After deducting PAGA Counsel's Attorneys' Fees
14 and Costs, Plaintiff's Service Award, and Settlement Administration Costs from the Gross
15 Settlement Amount, the remaining amount will comprise the Net Settlement Amount. The Net
16 Settlement Amount is comprised of the LWDA Payment and the PAGA Aggrieved Employee
17 Payment. The Net Settlement Amount of approximately \$32,500 shall be allocated 75% to the
18 LWDA Payment, which is estimated to total \$24,375.00. The remaining 25% of the Net Settlement
19 Amount, estimated to total \$8,125.00, shall be allocated to the PAGA Aggrieved Employee Payment
20 to be paid to the Aggrieved Employees on a *pro rata* basis as noted below, which shall be referred
21 to as the Aggrieved Employee's "**Individual PAGA Payment.**"

22 f. Taxes and Reporting: The Individual PAGA Payments will be treated as non-
23 wage income to the Aggrieved Employees and reported by the Settlement Administrator on IRS
24 Form 1099.

25 30. **Release By PAGA Members**

26 a. PAGA Members Limited Release. Each PAGA Member (including Plaintiff)
27 shall, for the Covered Period, fully release and forever discharge Defendant from any and all claims
28 for PAGA penalties that were asserted pursuant to Labor Code Section 2699 for civil penalties

1 (excluding wages) in Plaintiff's PAGA Notice, including but not limited to the Released Claims,
2 submitted on April 30, 2021.

3 b. No Claims Based On Agreement. No Aggrieved Employee will have any
4 claim against any of the Released Parties, Defendant's counsel, the Representative Plaintiff, or
5 PAGA Counsel, based on errors in administering claims or performing the mailing and skip-tracing
6 requirements of the Settlement Administrator under this Agreement.

7 31. Settlement Funding

8 Subject to Court approval of the Settlement, payment shall be made to the administrator
9 within 14 days of Court approval (assuming that the LWDA has not intervened or indicated in
10 anyway that it intends to intervene in the settlement). If the LWDA has intervened, or indicated that
11 it may intervene, payment will be due 14 days after any such intervention is resolved, or the LWDA
12 indicates that it is no longer going to intervene in the Action.

13 32. PAGA List.

14 Within 10 days after the Effective Date, Defendant will compile a PAGA Member list
15 containing: (1) name; (2) last known home address and telephone number; (3) number of pay periods
16 as a PAGA Member during the Covered Period; and (4) social security number. The PAGA
17 Members shall receive a pro rata share of the PAGA Aggrieved Employee Payment allocated to
18 PAGA Members, which will be calculated using a ratio of (a) the number of pay periods worked by
19 the PAGA Member during the Covered Period to (b) the total number of pay periods worked by all
20 PAGA Members during the Covered Period.

21 33. List Of Individual Settlement Amounts.

22 Within 10 days after the Settlement Administrator receives the PAGA List, the Settlement
23 Administrator will provide to PAGA Counsel and Defendant's counsel a Proceeds List reflecting
24 the Individual PAGA Payment for each Aggrieved Employee ("Proceeds List"). The Proceeds List
25 provided to PAGA Counsel will not include the Aggrieved Employees' names, social security
26 numbers or contact information.

27 34. PAGA Payments to Aggrieved Employees.

28 a. On the Payment Date, the Settlement Administrator will mail to each

1 Aggrieved Employee, via first-class United States Mail, the following: (a) the PAGA Settlement
2 Notice in English and Spanish, attached as Exhibit A to this Agreement and (b) their Individual
3 PAGA Payment (collectively, the “PAGA Packet”).

4 b. Prior to mailing, the Settlement Administrator will update all addresses using
5 the National Change of Address System (NCOA). In the event that a PAGA Packet is returned to
6 the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send
7 the PAGA Packet to the forwarding address identified. If no forwarding address is provided, then
8 the Settlement Administrator will promptly conduct a “standard search,” sometimes called, “Skip
9 Trace” or “Credit Header” searches, to locate a better address. If a better address is found, the
10 Settlement Administrator will promptly re-send the PAGA Packet. If a better address is not found
11 or the PAGA Packet is ultimately returned without a forwarding address, neither the Settlement
12 Administrator, Defendant, or PAGA Counsel shall be required to take further action.

13 c. Aggrieved Employees shall have 180 calendar days after the date the PAGA
14 Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee’s
15 check is not cashed within that period, the settlement payment check will be voided and a stop-
16 payment will be issued. Neither Defendant, Defendant’s counsel, Plaintiff, nor PAGA Counsel will
17 have any liability for lost or stolen settlement payment checks, forged signatures on settlement
18 payment checks, unauthorized negotiation of settlement payment checks or failure to timely cash a
19 settlement payment check within the 180-day period.

20 d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus any
21 accrued interest that has not otherwise been distributed pursuant to order of the Court, shall be
22 transmitted to California State Controller’s Office for Unclaimed Property in the name of each
23 Aggrieved Employee who failed to cash their Individual PAGA Payment prior to the void date.

24 35. **Payments Of Attorneys’ Fees And Costs, and the LWDA Settlement Payment.**

25 a. On the Payment Date, the Settlement Administrator will pay from the Gross
26 Settlement Amount to PAGA Counsel its Court-approved Attorneys’ Fees and Costs.

27 b. On the Payment Date, the Settlement Administrator will pay the LWDA
28 Payment from the Net Settlement Amount by issuing a check payable to “California Labor

1 Workforce and Development Agency.”

2 36. **Deadlines.**

3 If any deadline specified in this Agreement falls on a Saturday, Sunday, or Court holiday,
4 the deadline will be automatically extended to the next regular business day. Unless specified
5 otherwise, all references to “days” shall mean calendar days.

6 37. **Enforcement and Continuing Jurisdiction of the Court.**

7 Pursuant to the Parties agreement, this Settlement Agreement will be approved by the Court
8 and will be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6.
9 Even after the entry of the Final Order and Judgment, this Court will have and retain continuing
10 jurisdiction over the Action and over all Parties and the Aggrieved Employees, to the fullest extent
11 necessary or convenient to enforce and effectuate the terms and intent of this Settlement Agreement
12 and all matters provided for in it, and to interpret it.

13 38. **Mutual Full Cooperation.**

14 The Parties will fully cooperate with each other to accomplish the terms of this Settlement
15 Agreement, including, but not limited to, execution of such documents and taking such other action
16 as may be reasonably necessary or convenient to implement it.

17 39. **Non-Admission Of Liability.**

18 The Parties enter into this Agreement to resolve the dispute that has arisen between them
19 and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement,
20 Defendant does not admit, and specifically denies, that it has violated any federal, state, or local
21 law; violated any regulations or guidelines promulgated pursuant to any statute or any other
22 applicable laws, regulations or legal requirements; violated or breached any duty; engaged in any
23 misrepresentation or deception; or engaged in any other unlawful conduct with respect to the Action.
24 Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected
25 with it, shall be construed as an admission or concession by Defendant of any such violations or
26 failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms
27 of this Agreement, this Agreement and its terms and provisions shall not be offered or received as
28 evidence in any action or proceeding to establish any liability or admission on the part of Defendant

1 or to establish the existence of any condition constituting a violation of, or a non-compliance with,
2 federal, state, local or other applicable law.

3 40. **Effective Date Of Defendant's Obligations Under This Agreement.**

4 Defendant's obligations under this Settlement Agreement will become final and effective
5 only upon the occurrence of the Effective Date. In the event that any of the conditions specified in
6 this Settlement Agreement are not satisfied, or in the event that this Settlement does not obtain
7 approval of the Court for any reason, all matters covered by this Agreement will be null and void.
8 In such event, neither this Agreement nor any negotiations leading to this Settlement will be used
9 or construed by or against any Party as a determination, admission, or concession of any issue of
10 law or fact in the litigation; and the Parties do not waive, and instead expressly reserve, their
11 respective rights regarding the prosecution and defense of the Action, including all available
12 defenses and affirmative defenses, and to challenge any claim, as if this Settlement Agreement never
13 existed.

14 41. **Nullification.**

15 If: (1) the Court should for any reason fail to enter the Final Order and Judgment; or (2) the
16 Court's Final Order and Judgment is reversed or modified as to any material term as defined above,
17 or declared or rendered void as to any material term as defined above, then (a) the Settlement
18 Agreement shall become null and void; (b) the Parties will revert to their respective positions
19 immediately prior to reaching the settlement; and (c) the Parties shall evenly split the Settlement
20 Administration Costs.

21 42. **Invalidation.**

22 Invalidation of any material term of this Settlement Agreement will invalidate this
23 Agreement in its entirety unless the Parties subsequently agree in writing that the remaining
24 provisions will remain in full force and effect.

25 43. **Entire Agreement.**

26 This Settlement Agreement constitutes the entire integrated agreement between the Parties
27 relating to the Action, and no oral representations, warranties, or inducements have been made to
28 any party concerning this Settlement Agreement other than the representations, warranties, and

1 covenants contained and memorialized in this Settlement Agreement.

2 44. **Authorization To Act.**

3 PAGA Counsel warrants and represents that they are authorized by the Representative
4 Plaintiff, and counsel of record for Defendant warrants that it is authorized by Defendant, to take all
5 appropriate action required or permitted to be taken by such Parties pursuant to this Settlement
6 Agreement to effectuate its terms, and to execute any other documents required to effectuate the
7 terms of this Settlement Agreement, except for any documents, including but not limited to this
8 Settlement Agreement, that are required to be executed by the Parties.

9 45. **Modification Only In Writing.**

10 This Settlement Agreement may be amended or modified only by a written instrument signed
11 by all Parties or their successors in interest.

12 46. **Binding On Successors.**

13 This Settlement Agreement is binding upon and will inure to the benefit of the Parties to this
14 Agreement, as well as their respective attorneys, past, present, and future predecessors, successors,
15 shareholders, officers, directors, employees, agents, trustees, representatives, administrators,
16 fiduciaries, assigns, insurers, executors, partners, parent corporations, subsidiaries, and related or
17 affiliated entities.

18 47. **No Prior Assignments.**

19 The Aggrieved Employees are deemed by operation of the Final Order and Judgment to
20 represent, covenant, and warrant that they have not directly or indirectly assigned, transferred,
21 encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any
22 liability, claim, demand, cause of action, or rights released and discharged by this Agreement.

23 48. **Governing Law.**

24 All terms of this Settlement Agreement will be governed by and interpreted according to the
25 laws of the State of California, without giving effect to conflicts of laws principles.

26 49. **Counterparts.**

27 This Settlement Agreement may be executed in one or more counterparts. All executed
28 counterparts and each of them will be deemed to be one and the same instrument. Counsel for the

1 Parties will exchange among themselves signed counterparts.

2 50. **Headings For Convenience Only.**

3 The descriptive headings of any paragraphs or sections of this Settlement Agreement are
4 inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

5 51. **Construction Of This Agreement.**

6 The Parties agree that the terms and conditions of this Settlement Agreement are the result
7 of arms-length negotiations between the Parties and that this Settlement Agreement will not be
8 construed in favor of or against any Party by reason of the extent to which any Party, or his or its
9 counsel participated in the drafting of this Agreement. This Settlement Agreement constitutes the
10 entire agreement between the Parties. Except as expressly provided in this Agreement, this
11 Settlement Agreement has not been executed in reliance upon any other oral or written
12 representations or terms and no such extrinsic oral or written representations or terms will modify,
13 vary or contradict the terms of this Settlement Agreement. In entering this Settlement Agreement,
14 the Parties explicitly recognize California Civil Code section 1625 and California Code of Civil
15 Procedure section 1856(a), which provide that a written agreement is to be construed according to
16 its terms and may not be varied or contradicted by extrinsic evidence. The Representative Plaintiff
17 and Defendant had available to it the advice and assistance of independent counsel. As such, neither
18 Representative Plaintiff nor Defendant may claim that any ambiguity in this Settlement Agreement
19 should be construed against the other.

20 52. **Corporate Signatories.**

21 Any person executing this Settlement Agreement or any related document on behalf of a
22 corporate signatory warrants and promises for the benefit of all Parties that such person has been
23 duly authorized by such corporation to execute this Settlement Agreement or any related document.

24 53. **Representation By Counsel.**

25 All of the Parties hereto acknowledge that they have been represented by counsel throughout
26 all negotiations which preceded the execution of this Settlement Agreement and that this Agreement
27 has been executed with the consent and advice of counsel.

28 54. **Attorneys' Fees And Costs.**

1 Except as otherwise provided in this Agreement, the Parties will bear responsibility for their
2 own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Action
3 and will not seek reimbursement thereof from any Party to this Settlement Agreement. In the event
4 of a proven breach of this Agreement, the breaching party will be required to pay the prevailing
5 Party's reasonable attorneys' fees and costs incurred in enforcing this Agreement.

6 **IT IS SO AGREED:**

7 Dated: 6/10/2022

PLAINTIFF HOWARD DREWS

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Dated: 6/20/22

DEFENDANT TUFF SHED, INC.

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15

By: [Signature]
Its: General Counsel

16

17

APPROVED AS TO FORM ONLY:

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Dated: June 14, 2022

MOON & YANG, APC

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20

21

[Signature]
Allen Feghali
Attorneys for Plaintiff

22

23

APPROVED AS TO FORM ONLY:

24

Dated: June 20, 2022

PALMER KAZANJIAN WOHL HODSON
LLP

25

26

27

[Signature]
Larry Kazanjian
Attorneys for Defendant
Tuff Shed, Inc.

28

EXHIBIT A

[CLAIMS ADMINISTRATOR LETTERHEAD]

Mailing Date

NOTICE OF SETTLEMENT

Re: Drews v. Tuff Shed, Inc., Case No. 34-2021-00300020 filed on May 3, 2021 (the "Lawsuit")

[claims admin info]

You have received the enclosed check in connection with the Settlement of the above-referenced lawsuit brought by a former employee Howard Drews ("Plaintiff") against Tuff Shed, Inc. ("Defendant") for civil penalties pursuant to the Private Attorneys General Act, Labor Code § 2698 et seq. ("PAGA").

Plaintiff claimed he and other non-exempt employees of Defendant employed anytime from April 30, 2020 through [DATE] were subjected to various Labor Code violations.

Defendant denies all allegations and liability, but to avoid further time and expense of protracted and uncertain litigation, Defendant and Plaintiff have agreed to settle the lawsuit for civil penalties. The settlement, approved by the Court on [DATE], resolves the alleged claims brought on behalf of all past and present non-exempt hourly employees of Defendant who worked in California at any time from April 30, 2020 and [DATE] ("PAGA Group").

Pursuant to the Court's Order, a payment of \$100,000.00 was approved in settlement of this lawsuit. Upon the date of entry of that Order approving this Settlement, and payment of all funds due under this Settlement, the California Labor and Workforce Development Agency ("LWDA") and PAGA Settlement Members, including Plaintiff, fully release and forever discharge the Released Parties from any and all Released Claims defined as all claims for relief under PAGA, of whatever kind or nature, whether known or unknown, arising during the Covered Period, based on the facts alleged by Plaintiff in the Action and Plaintiff's notice letter to the LWDA including, but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 205.5, 210, 218, 218.6, 226, 226.3, 226.7, 246, 256, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1175, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 2751, 2802, 2699, and the applicable IWC Wage Orders, and any resulting claim for attorneys' fees and costs under PAGA. The release does not extend to any individual claims.

After accounting for Plaintiff's Counsel's attorneys' fees of \$35,000.00 and reimbursement of litigation costs of \$_____, settlement administration costs of \$_____, and \$7,500.00 as a service award and individual settlement Plaintiff, the remaining sum called the "PAGA Payment" will be divided pursuant to California law as follows: \$_____ (75%) to the State of California Labor Workforce Development Agency and \$_____ (25%) to all PAGA Group employees to be shared on a proportionate basis. The enclosed check represents your share based upon the number of Pay Periods you worked any time during the period from April 30, 2020 and [DATE] ("PAGA Period"). An IRS 1099 form is enclosed. You will be solely responsible for paying federal, state, or local taxes, if any, on the amount of your check.

Regardless of whether you negotiate the enclosed check, by way of this Settlement and the corresponding Final Order, for the PAGA Period, each PAGA Settlement Employee shall fully release Defendant for all claims for civil penalties under PAGA as alleged in the LWDA Letter and Plaintiff's Operative Complaint filed in this Action or reasonably could have been asserted under Labor Code § 2698 et seq. based upon the facts alleged in the LWDA Letter and Plaintiff's Complaint filed in this Matter.

Your enclosed check is valid for 180 days from the date of its issuance. **It is strongly recommended that you cash or deposit this check immediately.** After that date, you cannot cash the check and it will be null and void

and the amount forwarded to the State of California Controller's Office Unclaimed Property Division for further handling. **Even if you fail to cash the enclosed check, you will still be deemed to have waived all claims arising from the Lawsuit, including all claims set forth in the release of claims described above.**

If the check is lost or misplaced, please contact the Administrator immediately, [xxx-xxx-xxxx] to have it reissued. If you have any questions about your check, please contact the [insert administrator information].