

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Class Action Settlement Agreement and Release of Claims (“Settlement Agreement” or “Settlement”), is entered into between Plaintiff Andy Jacques (“Plaintiff”), on behalf of himself and on behalf of the Class Members, and Defendant Mike’s Mobile, Inc. (“Defendant”).

I. RECITALS.

1. Plaintiff filed a notice with the California Labor and Workforce Development Agency (“LWDA”) on May 20, 2021. Plaintiff’s LWDA notice alleged that Defendant violated Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1197, 1197.1, and 2802. Specifically, Plaintiff’s LWDA notice alleged that Defendant: 1) failed to compensate non-exempt employees for all time worked because they were not compensated for all work-related driving time and pre-job activities, 2) failed to furnish non-exempt employees with all required meal and rest periods, 3) failed to reimburse non-exempt employees for work-related personal cellular phone use, 4) failed to incorporate non-discretionary bonuses and/or commissions into non-exempt employees’ regular rate of pay for purposes of paying overtime, 5) failed to pay all wages at termination or within 72 hours of resignation, and 6) failed to furnish accurate itemized wage statements.

2. Subsequent to the filing of Plaintiff’s LWDA Notice, the Parties engaged in formal and informal discovery, and data exchange. Plaintiff requested, and Defendant provided, informal discovery regarding the size and scope of the class; the policies, practices, and procedures responsible for the alleged violations; and the alleged damages that flow therefrom.

3. Defendant provided Class Counsel with documents relating to its policies, practices and procedures, and a representative sampling of time and payroll records for the Class Members.

4. In January 2022, the Parties participated in a mediation with Justice Steven Vartabedian (Ret.) and reached a settlement after a full-day mediation following extensive and at-times contentious negotiations. The material terms of the Parties’ settlement were memorialized by a confidential Memorandum of Understanding executed by the Parties on or about February 3, 2022.

5. As part of settlement negotiations and for purposes of effectuating the settlement reached herein, the Parties have agreed that Plaintiff will file a Complaint in the Superior Court of California in and for the County of San Joaquin, a copy of which is attached hereto as **Exhibit A**.

6. For purposes of this Settlement only, Plaintiff contends, and Defendant does not dispute, that there is sufficient evidence to support the requisites for certification of the Class for settlement purposes, specifically:

- a. There are approximately 227 Class Members, which is so numerous as to make it impractical to join all Class Members;
- b. The Class is ascertainable from Defendant’s records;
- c. Common questions of law and fact exist;

d. The claims of Plaintiff are typical of the claims of the Class Members and Plaintiff is an adequate representative and should be appointed as such;

e. Mayall Hurley P.C. is adequate to represent the Class and should be appointed as Class Counsel;

f. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which could establish incompatible standards of conduct; and

g. Questions of law and fact common to the members of the Class predominate over questions affecting individual members of the Class and a class action is superior to other available means for the fair and efficient adjudication of the controversy.

7. By entering into this Settlement, Defendant admits no liability, and explicitly denies liability or wrongdoing of any kind, arising from the claims alleged in the Class Action. This Settlement shall not constitute an admission by Defendant as to any interpretation of the law or as to the merits, validity, the accuracy of any of the claims made against it in the Class Action, or that the claims alleged are suitable for class-wide treatment.

II. DEFINITIONS.

8. “Class” and “Class Members” refers to all current and former hourly paid or non-exempt employees of Defendant who worked at any time between July 22, 2017 and the earlier of 90 days after the execution of this Settlement Agreement or the Court’s order granting preliminary approval of this Settlement Agreement.

9. “Class Action” refers to all of the claims made by the complaint attached to this agreement as **Exhibit A**.

10. “Class Counsel” refers to Mayall Hurley P.C., by and through William J. Gorham, III, Robert J. Wasserman, Nicholas J. Scardigli, and Vladimir J. Kozina.

11. “Class List” refers to the list of Class Member information to be provided to the Settlement Administrator by Defendant.

12. “Class Notice” refers to the Notice of Pendency of Class Action, Preliminary Approval of Settlement, and Hearing for Final Approval, substantially in the form attached here to as **Exhibit B**, as it may be modified by agreement of the Parties or upon order of the Court, which will be sent to the Class Members.

13. “Class Period” means July 22, 2017, through the earlier of 90 days after the execution of this Settlement Agreement or the Court’s order granting preliminary approval of this Settlement Agreement.

14. “Class Representative” refers to Plaintiff Andy Jacques.

15. “Defendant” refers to Mike’s Mobile, Inc.

16. “Defense Counsel” refers to Tim Nelson, Esq., and Kyle Owen, Esq. of Medina McKelvey, LLP.

17. “Effective Date” as defined below is a condition of performance of the obligations under this Settlement. The Effective Date is determined as follows: If no Class Member or any person claiming to have standing submits an objection or otherwise purports to object to the Settlement Agreement, then the Effective Date is the date of the Court’s entry of a final approval order and judgment finally approving the Settlement Agreement (“Order of Final Approval”). If any Class Member or any person claiming to have standing submits an objection or otherwise purports to object to the Settlement Agreement, then the Effective Date is the date after (a) the Court’s entry of the Order of Final Approval, *and* (b) the first to occur of the following: (1) the date for seeking appellate review of the Court’s Order of Final Approval has passed without a timely appeal or request for review having been made (*i.e.*, 61 days after entry of the trial court’s Order of Final Approval and Judgment); or (2) if an appeal, review, or writ is sought from the Order of Final Approval, the day after the Order of Final Approval is affirmed or the appeal, review or writ is dismissed or denied, and the Order of Final Approval is no longer subject to further judicial review.

18. “Final Approval Hearing” means the hearing set by the Court for the purpose of determining, among other things, (1) the fairness, adequacy, and reasonableness of the Settlement, (2) the Service Payment to the Class Representative, (3) payment to the Settlement Administrator of its fees and costs; and (4) the fees and costs of Class Counsel.

19. “Final Approval Order” or “Order of Final Approval” refer to the order of the Court granting final approval of this Settlement and entering a judgment approving this Settlement on substantially the same terms provided herein or as may be modified by subsequent agreement of the Parties.

20. “Maximum Settlement Amount” refers to the maximum amount which Defendant is obliged to pay under this Agreement, *i.e.*, One Hundred Ninety-Five Thousand Dollars and Zero Cents (\$195,000.00).

21. “Net Settlement Amount” refers to the Maximum Settlement Amount, less the Court-approved (a) fees and costs of the Settlement Administrator, (b) Defendant’s employer-side taxes, (c) payment to the California Labor and Workforce Development Agency (“LWDA”), (d) Service Payments of Class Representative, and (e) Class Counsel’s Fees and Costs.

22. “Non-Technician Subclass” refers to all current and former hourly paid or non-exempt employees of Defendant employed in a position other than that of technician at any time during the Class Period.

23. “Order of Preliminary Approval” or “Preliminary Approval Order” refer to the order of the Court granting preliminary approval of this Settlement and authorizing dissemination of the Class Notice substantially in the form attached here to as **Exhibit B**, or as it may be modified by agreement of the Parties or upon order of the Court.

1 24. "PAGA Period" refers to the period from May 20, 2020, through the earlier of through
2 the earlier of 90 days after the execution of this Settlement Agreement or the Court's order granting
preliminary approval of this Settlement Agreement.

3 25. "Participating Class Members" refers to all Class Members who choose to participate in
4 this Settlement and who do not timely and validly exclude themselves from the Settlement in accordance
with the procedures set forth herein.

5 26. "Parties" refers to Plaintiff and Defendant.

6 27. "Plaintiff" refers to Plaintiff Andy Jacques.

7 28. Defendant refers to Mike's Mobile, Inc.

8 29. "Released Claims" refers collectively to the claims released by Participating Class
9 Members as defined in Paragraph 57.

10 30. "Released PAGA Claims" means claims brought under California's Private Attorneys
11 General Act ("PAGA") released by Plaintiff on behalf of himself and the other allegedly aggrieved
12 employees and the LWDA, described in detail in Paragraph 58, as against Defendant.

13 31. "Released Parties" means collectively Defendant, its insurers, parents, subsidiaries,
14 affiliated companies, charitable organizations, partners, trustees, directors, officers, agents, attorneys,
servants and employees, past and present and each of them.

15 32. "Response Period" means the final date, sixty (60) days after the Settlement
16 Administrator mails the Class Notice to the Class Members, upon which Class Members may submit a
17 request for exclusion or objection to the Settlement.

18 33. "Settlement Administrator" refers to Simpluris, Inc., the third-party administrator whom
19 the Parties have selected to administer the Settlement in accordance with the terms set forth herein and
as approved by the Court.

20 34. "Settlement Share" refers to the payment to which a Participating Class Member is
21 entitled to receive pursuant to the Settlement.

22 35. "Technician Subclass" refers to all current and former technicians employed by
23 Defendant at any time during the Class Period.

24 36. "Qualified Settlement Fund" or "QSF" means an account that will qualify and be
25 characterized as a Qualified Settlement Fund under the provisions of the U.S. Treasury Regulations
1.486B-1 and 1.468B-5, to be set up as provided below, and into which the Maximum Settlement
26 Amount is to be deposited as agreed herein, to be administered in a manner consistent with law and the
terms of this Settlement.

1 **III. APPLICATION FOR APPROVAL OF THE SETTLEMENT, CLASS CERTIFICATION,**
2 **DISSEMINATION OF NOTICE, AND SETTING OF FINAL APPROVAL HEARING.**

3 37. Promptly upon the full execution of this Agreement, Plaintiff shall file the Complaint
4 attached hereto as **Exhibit A** and subsequently promptly apply to the Court for approval of the
5 Settlement, including an Order of Preliminary Approval that, among other things, (a) preliminarily
6 approves the Settlement under the legal standards relating to the approval of class action settlements; (b)
7 preliminarily certifies the Class for settlement purposes only; (c) approves the Class Notice and
8 authorizes dissemination of the same; (d) preliminarily approves Andy Jacques as Class Representative;
9 (e) preliminarily approves Mayall Hurley, P.C. as Class Counsel; (f) preliminarily approves Simpluris,
10 Inc. to serve as Settlement Administrator; and (g) sets a Final Approval Hearing and briefing schedule.
11 Should this Settlement not become effective for any reason, the fact that the Parties stipulated to
12 certification of a Class shall have no bearing on and shall not be admissible on the question of whether a
13 class action should be certified in a non-settlement context.

14 **IV. CONSIDERATION FOR THE SETTLEMENT.**

15 38. Maximum Settlement Amount.

16 The Parties agree to settle this Class Action for the Maximum Settlement Amount of
17 \$195,000.00. The settlement is being made on an all-in, non-reversionary basis, such that Defendant
18 will pay the entirety of the agreed-upon Maximum Settlement Amount. The Maximum Settlement
19 Amount is paid by Defendant in full and final settlement of (a) the Released Claims, (b) the fees and
20 costs of the Settlement Administrator, (c) Defendant's employer-side taxes (d) the payment to the
21 LWDA, (e) the Service Payment to the Class Representative, and (f) Class Counsel's Fees and Costs.
22 The deposit of the Maximum Settlement Amount into the QSF shall be made within twenty-one (21)
23 days after the Effective Date.

24 39. Allocation of the Maximum Settlement Amount.

25 Subject to Court approval, the Maximum Settlement Amount of \$195,000 will be allocated as
26 follows:

- 27 (i) Up to \$15,000 for the fees and costs of the Settlement Administrator;
- 28 (ii) \$20,000 payment to LWDA under the PAGA;
- (iii) \$5,000 Service Payment to the Class Representative;
- (iv) Up to \$10,000 payment to Class Counsel for declared reasonable costs and expenses; and
- (v) \$64,993.50 payment to Class Counsel for attorneys' fees.

The remainder constitutes the Net Settlement Amount: \$80,006.50.

40. Reasonable Fees and Costs of the Settlement Administrator.

All of the Settlement Administrator's fees and costs, which are not to exceed \$15,000 unless otherwise approved by the Court, will be paid out of the Maximum Settlement Amount from the QSF. Should the Settlement Administrator's fees and costs be less than \$15,000, the remainder shall become part of the Net Settlement Amount that is distributed to Participating Class Members.

1 41. Payment to the LWDA under the PAGA.

2 The Settlement allocates \$20,000 to the PAGA claims. Defendant does not oppose the
3 allocation. Of that amount, 75% – or \$15,000 – will be paid to the LWDA, and 25% – or \$5,000 – will
4 be returned to the portion of the Net Settlement Amount allocated to the Participating Class Members.
5 The Parties agree that any and all payments made by Defendant to the State of California or any of its
6 agencies pursuant to this Settlement Agreement, including the LWDA, shall be exclusively remedial in
7 nature, and not punitive, that is, the payments are in the nature of compensation to the LWDA for
8 enforcement of labor laws, including the administration of the PAGA, and for education of employers
9 and employees about their rights and responsibilities under the Labor Code.

10 42. Service Payment to Class Representative.

11 Subject to Court approval, Class Representative will apply for a Service Payment of not to
12 exceed \$5,000, in consideration for his efforts on behalf of the Class including, but not limited to,
13 assisting in the investigation of their claims and consulting with Class Counsel, providing critical
14 information and documents to Class Counsel, assisting in analysis of the claims, participating in
15 settlement negotiations and mediation, as well as the drafting of the Settlement Agreement. Any Service
16 Payment approved by the Court will be paid out of the Maximum Settlement Amount and shall be in
17 addition to his Settlement Share under the terms of the Settlement. In addition to the claims released
18 under the Settlement, and as set forth in greater detail below, Class Representative will also provide a
19 general release which includes California Civil Code section 1542 waiver. The Settlement
20 Administrator will issue an IRS Form 1099 for any Service Payment approved by the Court. The
21 Settlement Administrator shall mail each installment of the Service Payment to the Class Representative
22 within 10 days after Defendant funds the QSF. Defendant does not oppose the proposed Service
23 Payments.

24 43. Reasonable Attorneys' Fees and Costs to Class Counsel.

25 Subject to Court approval, Class Counsel will apply to the Court for an award of attorneys' fees
26 and costs incurred in connection with the prosecution of this matter; all of the work remaining to be
27 performed including, but not limited to, drafting the Settlement Agreement; drafting the Class Notice;
28 soliciting bids from, negotiating with, and retaining the Settlement Administrator; preparing all of the
motions and documents necessary to secure Court approval of the Settlement Agreement (including all
related appellate work); carrying out their duties to see that the Settlement Agreement is fairly
administered and implemented; responding to questions from Class Members; and obtaining dismissal
of the Class Action.

Class Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed
\$64,993.50, or one-third, of the Maximum Settlement Amount, and declared costs and expenses of up to
\$10,000.00. Defendant does not oppose Class Counsel's request. The fees and costs awarded to Class
Counsel by the Court shall be paid out of the Maximum Settlement Amount from the QSF. The
Settlement Administrator shall issue an IRS Form 1099 to Class Counsel in connection with this
payment. The Settlement Administrator shall distribute the attorneys' fees and costs awarded to Class
Counsel within 10 days after Defendant funds the QSF.

In the event that a lesser sum is awarded for the attorneys' fees and costs referenced above, or for
the Service Payment referenced in Paragraph 41, the approval by the Court of any such lesser sum(s)

1 shall not be grounds for Plaintiff and/or Class Counsel to terminate the Settlement, but such an order
2 shall be appealable by them. In the event that such an appeal is filed, administration of the portion of the
3 attorneys' fees and/or costs award and/or service payment in dispute will be segregated and stayed
4 pending the exhaustion of appellate review. If, after the exhaustion of any such appellate review,
5 additional amounts are distributable to the Participating Class Members, the cost of administration of the
6 payments to them will be paid out of such additional amounts and not by Defendant. In the event that
7 appellate review is not sought regarding Class Counsel's attorneys' fees and costs, any amount not
8 awarded in attorneys' fees, costs and Service Payment shall be added to the Maximum Settlement
9 Amount and distributed to the Participating Class Members in accordance with the terms of the
10 Settlement.

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13 44. Tax Treatment of Settlement Shares.

14 For the purpose of taxes and required withholdings, the Parties agree to the following: the
15 entirety of each Participating Class Member's Settlement Share shall constitute 20% wage income (for
16 which an IRS Form W-2 shall be issued) and 80% non-wage income, including interest and penalties
17 (for which an IRS Form 1099 shall be issued).

18 Defendant, Defendant's counsel, the Settlement Administrator, and Plaintiff's counsel make no
19 representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff
20 and Participating Class Members are not relying on any statement, representation, or calculation by
21 Defendant, Defendant's counsel, Plaintiff's counsel, or the Settlement Administrator in this regard.
22 Plaintiff and Participating Class Members understand and agree that they will be solely responsible for
23 the payment of any taxes and penalties assessed on their respective payments described herein and will
24 defend, indemnify, and hold Defendant, Defendant's counsel, Plaintiff's counsel and the Settlement
25 Administrator free and harmless from and against any claims resulting from the tax treatment of such
26 payments.

27 45. No Effect on Employee Benefit Plans.

28 It is expressly understood and agreed that the receipt of Settlement Shares will not entitle any
Participating Class Member to additional or derivative compensation or benefits under any Defendant
bonus, contest or other compensation or benefit plan or agreement in place during the period covered by
the Settlement, nor will it entitle any Participating Class Member to any increased retirement, 401k
benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement that
the settlement awards provided for in this Agreement are the sole payments to be made by Defendant to
the Participating Class Members, and that the Participating Class Members are not entitled to any
additional or derivative compensation or benefits as a result of having received the Settlement Shares
(notwithstanding any contrary language or agreement in any benefit or compensation plan document that
might have been in effect during the period covered by this Settlement).

46. Undistributed Funds.

In the event that any checks mailed to Participating Class Members remain uncashed after the
expiration of 180 days, or an envelope mailed to a Participating Class Member is returned and no
forwarding address can be located for the Participating Class Member after reasonable efforts have
been made (including but not limited to skip tracing), then any such funds shall be transmitted to the

Settlement Administrator and distributed as follows in accordance with California Code of Civil Procedure section 384:

100% to Voluntary Legal Services of Northern California.

If the Court does not approve Voluntary Legal Services of Northern California as a *cy pres* designee, the Parties shall select a new *cy pres* designee, with approval by the Court.

Any Participating Class Member who does not opt out of the Settlement Agreement will be bound by the terms of this Settlement Agreement regardless of whether he or she cashes their check.

V. ADMINISTRATION OF THE SETTLEMENT.

47. Duties of the Settlement Administrator.

The Settlement Administrator shall perform the duties required by this Settlement by, among other things, and without limitation, (i) receiving and updating through normal and customary procedures the Class List to be produced by Defendant, so that it is updated prior to the mailing of the Class Notice, (ii) populating, printing, and mailing the Court-approved Class Notice, (iii) responding to Class Member inquiries as appropriate, (v) performing necessary additional skip traces on any notices and/or checks returned as undeliverable, (vi) tracking exclusions and calculating the Settlement Shares of the Participating Class Members, (vii) resolving disputes during the administration process in the manner described below, (viii) reporting to Class Counsel and Defense Counsel regarding administration of the Settlement, (ix) establishing the QSF in the manner described below, (x) preparing and mailing settlement checks to the Participating Class Members, (xi) preparing and distributing the Court-approved payments to itself, the LWDA, the Class Representative, and Class Counsel, (xii) preparing all appropriate tax forms required in connection with the payments called for by this Settlement and remitting those forms and all required payments to the appropriate governmental agencies, (xiii) providing notice of the Settlement in accordance with the Class Action Fairness Act (“CAFA”), (xiv) preparing a final report summarizing the administration of the Settlement, and (xv) generally performing all normal and customary duties associated with the administration of such settlements.

48. Dispute Resolution.

The Settlement Administrator shall have the initial responsibility for resolving any disputes that arise during the administration of the Settlement including, without limitation, disputes regarding whether a Class Member is entitled to a Settlement Share and, if so, the amount thereof. In resolving such disputes, Defendant’s employment records shall be presumed accurate and correct, and shall be final and binding unless the information submitted by the individual (e.g., time records, wage statements, employment records, etc.) proves otherwise. In the event that the Settlement Administrator cannot resolve a dispute based upon a review of Defendant’s records, the Settlement Administrator will schedule a call with Class Counsel and Defense Counsel to discuss and resolve the dispute. After such call, the Settlement Administrator will resolve the dispute and such resolution will be final and binding on the Class Member.

1 49. Establishing the Qualified Settlement Fund.

2 The Settlement Administrator shall be responsible for establishing a QSF upon the Court's
3 approval to do so, which approval the Parties will jointly seek. The QSF will be taxed as a separate
4 entity for purposes of all federal, state, and local taxes, and the Parties agree to treat the QSF on a basis
5 consistent therewith. Any interest accrued shall inure to the benefit of the Class. The Maximum
6 Settlement Amount shall be deposited into the QSF in a single payment of \$195,000.00, which shall be
made within fifteen (15) days after the Effective Date. Defendant may, at its discretion, deposit the
Maximum Settlement Amount, or any portion thereof, at an earlier date.

7 **VI. CLASS LIST, NOTICE TO CLASS MEMBERS, PARTICIPATION IN THE**
8 **SETTLEMENT, AND SETTLEMENT SHARES.**

9 50. Provision of the Class List.

10 Within fifteen (15) calendar days of the Court's entry of the Order of Preliminary Approval,
11 Defendant shall provide the Settlement Administrator with the Class List containing the following for
12 each Class Member: (i) name, (ii) last known address, (iii) social security number, (iv) dates of
13 employment, and (v) the total number of workweeks during which each Class Member worked during
the Class Period. This information shall be treated by the Settlement Administrator as Confidential
Information.

14 51. Notice to Class Members.

15 Promptly upon receipt of the Class List, the Settlement Administrator shall access the National
16 Change of Address Database ("NCOA") and update the addresses provided by Defendant. The
17 Settlement Administrator shall also populate the Class Notice with the number of workweeks that each
18 Class Member worked, dates of employment for each Class Member, and the Class Member's estimated
19 individual settlement payment. Within 10 calendar days after receipt of the Class List, the Settlement
20 Administrator shall mail the Class Notice to each Class Member via first-class mail. For each notice
21 returned as undeliverable before the Response Deadline, the Settlement Administrator shall promptly
22 attempt to determine a correct address using its best efforts and shall resend the notice to any new
23 address determined thereby.

24 52. No Claim Form Required.

25 Each Participating Class Member shall be entitled to a share of the Net Settlement Amount.
26 Participating Class Members shall not be required to complete a claim form. Class Members shall
27 receive a Class Notice informing them of the terms of the Settlement Agreement, their right to opt-out
28 and/or object, and an estimate of their share of the Net Settlement Amount. Unless a Class Member
elects to opt-out, he or she will be a Participating Class Member. Settlement Shares will be mailed to all
Participating Class Members.

53. Calculation of Settlement Shares.

The Settlement Shares will be proportionally based upon the number of compensable workweeks
each of the Participating Class Members worked during the Class Period. A workweek shall include any
week where a Participating Class Member recorded actual work time on Defendant's timekeeping

1 system and will not include weeks where a Participating Class Member only had sick time, vacation
2 time, was on leave, or otherwise did not record any actual work time in Defendant's timekeeping
3 system. The minimum number of workweeks that will be credited to any Participating Class Member
4 will be one (1). Seventy-five percent (75%) of the Net Settlement Fund shall be allocated to the shares
5 paid to Participating Technician Subclass Members ("Technician Subclass Payment Amount") and
6 Twenty-five Percent (25%) of the Net Settlement Fund will be allocated to the shares paid to
7 Participating Non-Technician Subclass Members ("Non-Technician Subclass Payment Amount"). The
8 amount of each Participating Class Member's Settlement Share shall be determined by the Settlement
9 Administrator as follows:

10 Technician Subclass Members:

11 The number of compensable workweeks worked by each of the Participating Technician
12 Subclass Members during the Class Period, divided by the total compensable workweeks
13 worked by all Participating Technician Subclass Members during the Class Period,
14 resulting in a payment ratio for each Participating Technician Subclass Member. Each
15 Participating Technician Subclass Member's payment ratio is then multiplied by the
16 Technician Subclass Payment Amount to determine his or her individual Settlement
17 Share.

18 Non-Technician Subclass Members:

19 The number of compensable workweeks worked by each of the Participating Non-
20 Technician Subclass Members during the Class Period, divided by the total compensable
21 workweeks worked by all Participating Non-Technician Subclass Members during the
22 Class Period, resulting in a payment ratio for each Participating Non-Technician Subclass
23 Member. Each Participating Technician Subclass Member's payment ratio is then
24 multiplied by the Technician Subclass Payment Amount to determine his or her
25 individual Settlement Share.

26 The Settlement Administrator shall mail the Settlement Shares to Participating Class Members
27 within 20 calendar days after Defendant funds the QSF.

28 54. Procedures for Challenges.

A Class Member may, before the Response Deadline, dispute the amount of his or her Settlement
Share, and the data used to calculate it, by timely sending a written notice to the Settlement
Administrator informing the Settlement Administrator of the nature of the dispute and providing any
records or documentation supporting their position. In response to such a challenge, Defendant will first
verify the accuracy of the information contained in its records. Next, Class Counsel and Defense
Counsel will make a good faith effort to resolve the dispute informally. If Class Counsel and Defense
Counsel are unable to agree, the dispute shall be resolved by the Settlement Administrator after
examination of the records provided by the Class Member and Defendant. The Settlement
Administrator's determination will be final and binding.

If, before the Response Deadline, an individual not previously identified in the Class List asserts
his or her membership in the Class and seeks recovery under the Settlement, the Settlement
Administrator shall provide Class Counsel and Defense Counsel with the evidence submitted by the

individual. To be eligible for recovery under this Settlement, individuals must provide sufficient proof to the Settlement Administrator supporting his or her request for inclusion, including specific evidence establishing that he or she qualifies as a Class Member as defined herein. If Class Counsel and Defense Counsel agree an individual is not a Class Member, the Settlement Administrator will inform the individual that their request for inclusion has been rejected. If Class Counsel and Defense Counsel are unable to agree, the dispute shall be resolved by the Settlement Administrator after examination of the records provided by the Class Member and Defendant. The Settlement Administrator's determination will be final and binding.

VII. EXCLUSIONS, OBJECTIONS AND BINDING EFFECT OF SETTLEMENT.

55. Right to Opt-Out of Settlement.

The Class Notice will advise each Class Member of their right to exclude themselves from or opt-out of the Settlement. To be effective, requests for exclusion must (a) be submitted in writing to the Settlement Administrator, postmarked on or before the Response Deadline (*i.e.*, no later than 60 calendar days from the date of mailing of the Class Notice); (b) contain the individual's full name, current home (or mailing address), and the last four digits of his or her social security number; (c) be signed by the individual; and (d) include written affirmation of his or her desire to exclude themselves containing the following or substantially similar language:

"I elect to opt-out of the *Jacques v. Mike's Mobile, Inc.* class action settlement. I understand that by doing so, I will not be able to participate in the settlement, and will not receive a share of the settlement."

The Settlement Administrator shall notify Class Counsel and Defense Counsel of the number of opt-outs within 48 hours of its receipt of requests for exclusion. The Class Notice shall include the specific address to which requests for exclusion must be mailed as well as a summary of this paragraph. Any Class Member who timely requests exclusion from this Settlement shall not have any rights under the Settlement, shall not be entitled to receive a Settlement Share, shall not be bound by the Settlement or the Order of Final Approval, and shall not have the right to file an objection to the Settlement.

56. Right of Class Members to Object to Settlement.

The Class Notice will advise each Class Member of their right object to the Settlement. To be effective, the Class Member cannot opt-out and objections must (a) be mailed to the Court, postmarked on or before the Response Deadline (*i.e.*, no later than 60 calendar days from the date of mailing of the Class Notice); (b) clearly identify the case name and number; (c) contain the objector's full name, current home (or mailing address), and the last four digits of his or her social security number; (d) clearly and concisely state all grounds for the objection; (e) indicate whether the objector is represented by counsel and, if so, identify such counsel; (f) indicate whether the objector and/or his or her counsel intend to appear at the Final Approval Hearing; and (g) be signed by the objector or his or her counsel.

The Class Notice shall include the specific address to which objections must be mailed as well as a summary of this paragraph. No Class Member may be heard at the Final Approval Hearing unless he or she has complied with these requirements, or any requirements mandated by the Court, and any Class Member who fails to comply with said requirements shall be deemed to have waived his or her right to object to the Settlement. The Parties will not be responsible for any fees, costs, or expenses incurred by

any Class Member and/or his or her counsel related to any objections to the Settlement and/or appeals arising therefrom. Any Class Member whose objection is overruled will be deemed to be a Participating Class Member and subject to the terms of this Settlement and the Court's Order of Final Approval.

57. Binding Effect on Participating Class Members.

All Participating Class Members will bound by the terms and conditions of this Settlement, the Court's Order of Final Approval, and the releases set forth herein, regardless of whether the Participating Class Member cashes his or her settlement check.

VIII. RELEASES

58. Released Claims.

As of the Effective Date, and in exchange for the consideration provided herein, Plaintiff Andy Jacques, on his own behalf and as Class Representative, all Participating Class Members hereby forever and completely release and discharge Defendant and Released Parties from the following claims:

- (i) Any and all claims asserted in the operative class action complaint (a copy of which is attached hereto as **Exhibit A**) and Plaintiff's LWDA Notice dated May 20, 2021 ("LWDA Notice"), all claims that could have been asserted in the operative class action complaint and Plaintiff's LWDA Notice during the Class Period, and all claims arising out of the same operative facts during the Class Period, including state wage and hour claims for any and all violations of California's Labor Code and Unfair Competition Law based on Defendant's failure to pay all wages due (including minimum and overtime wages) under Labor Code sections 510, 1198, 1194, 1197, and 1197.1; failure to provide compliant meal periods under Labor Code sections 226.7 and 512; failure to authorize and permit compliant rest periods under Labor Code section 226.7; failure to provide accurate itemized wage statements under Labor Code section 226(a); failure to timely pay all wages due at the time of termination and during employment under Labor Code section 201, *et seq.*; failure to reimburse employees for all business-related expenses under Labor Code section 2802; and violations of Business and Professions Code section 17200, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible.

59. Released PAGA Claims.

As of the Effective Date, it is understood and agreed that Plaintiff, on behalf of himself, the Labor and Workforce Development Agency, and the other aggrieved employees in the State of California, release Defendant and Released Parties from any and all claims based upon alleged violations of the Private Attorneys' General Act of 2004, (Labor Code sections 2698 *et seq.*) based upon the facts and theories set forth in Plaintiff's LWDA Notice, including allegations of violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1197, 1197.1, and 2802 during the PAGA Period.

1 60. Release by Class Representative.

2 As of the Effective Date, in addition to the Released Claims, and in consideration for receipt of a
3 Service Payment, Class Representative Andy Jacques expressly additionally releases all claims relating
4 to his employment with Defendant, conditions of employment, or the termination of his employment,
5 including but not limited to, claims for, breach of contract, breach of the covenant of good faith and fair
6 dealing, negligent or intentional infliction of emotional distress; defamation; wrongful discharge;
7 retaliation; harassment; violation of public policy; constructive discharge; whistleblowing; interference
8 with prospective economic advantage or contractual relations; unfair business practices; unfair
9 competition; or other tort or personal injury; violation of any federal, state, or other governmental
10 statute, regulation, or ordinance, including, without limitation violation of Title VII of the Civil Rights
11 Act of 1964, the Americans with Disabilities Act, the Family and Medical Leave Act, the California Fair
12 Employment and Housing Act, the California Family Rights Act, the California Labor Code or any
13 Industrial Welfare Commission Wage Order, and vested benefits under the Employee Retirement
Income Security Act. Class Representatives expressly waive and relinquish all rights and benefits
afforded by Section 1542 of the Civil Code of the State of California and does so understanding and
acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the
State of California states: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT IF KNOWN BY HIM
OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

14 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and
15 complete release and discharge of Defendant and Released Parties, Class Representative expressly
16 acknowledges that this Settlement is intended to include in its effect all claims that Class Representative
17 knows of, as well as all claims that he does not know or suspect to exist in his favor against Defendant
and Released Parties, and that this Settlement contemplates the extinguishment of any such claims.

18 **IX. FINAL SETTLEMENT APPROVAL.**

19 61. Final Approval Hearing.

20 Class Counsel will take all necessary steps to secure the Court's final approval of this Settlement.
21 Defense Counsel agrees not to oppose Class Counsel's request for final approval of this Settlement as
22 long as the Class Counsel's request for final approval is consistent with the terms of this Settlement. A
23 Final Approval Hearing shall be held for the purpose of considering, among other things, (a) the
24 fairness, adequacy, and reasonableness of the Settlement, (b) the Service Payment to Class
25 Representative, (c) the fees and reasonable costs of Class Counsel, and (d) the propriety of any timely
objections as well as Class Counsel's and Defense Counsel's responses thereto. The date of the Final
Approval Hearing shall be set by the Court, and notice of such shall be provided to Class Members in
the Class Notice. Although the Court may continue the Final Approval Hearing without further notice
to the Class Members.

26 Plaintiff will respectfully request the Court enter an Order of Final Approval, and Defendant
27 agrees not to oppose as long as the Order of Final Approval remains consistent with the terms of this
28 Settlement:

- (i) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;
- (ii) Approving payment to the Settlement Administrator;
- (iii) Approving the Service Payment to the Class Representative for his service as Class Representative;
- (iv) Approving Class Counsel's application for fees and reasonable costs;
- (v) Permanently enjoining and restraining Participating Class Members from and against initiating or pursuing against Defendant any individual, representative, or class claims released by this Settlement;
- (vi) Entering judgment in this Class Action consistent with the terms of this Settlement; and
- (vii) Retaining jurisdiction to the extent necessary over the subject matter of the Class Action and over the Parties and Class Members to enforce the terms of the Settlement.

X. TERMINATION OF THE SETTLEMENT.

62. Defendant's Right to Terminate the Settlement.

Notwithstanding any other provision in this Settlement, if five percent (5%) or more of the Class Members opt out of the Settlement, Defendant shall have the right, in its sole discretion, to rescind, nullify, and terminate the Settlement within 10 business days after the expiration of the Response Period. The Settlement Administrator shall notify Defense Counsel and Class Counsel via email immediately if the five percent (5%) threshold for opt-outs is exceeded. If Defendant exercises this right, however, it shall be responsible for the reasonable fees and costs of the Settlement Administrator to that point.

63. Effect of Termination.

If the Settlement is terminated in accordance with the terms set forth herein (a) the Settlement shall have no force or effect, and no party shall be bound by any of its terms; except as otherwise provided herein, (b) the Order of Preliminary Approval and/or Order of Final Approval shall be vacated, (c) the Settlement and all negotiations, statements, and proceedings related thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Class Action prior to the settlement, and (d) neither this Settlement Agreement, nor the filings in connection with the sought approval thereof, shall be admissible or offered into evidence in the Class Action or in any other action for any reason whatsoever.

XI. MISCELLANEOUS TERMS.

64. Mutual Cooperation.

The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, executing and amending such documents and taking such other actions as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. Neither party, nor their counsel, employees, or agents, shall solicit or encourage any Class Member to exclude themselves from the Settlement or object to the Settlement.

1 65. Modification.

2 This Settlement Agreement may not be changed, altered, or modified, except in writing and
3 signed by counsel for the Parties, and approved by the Court, provided however that changes solely to
4 the timing and deadlines herein may be made for administrative convenience by written agreement of
5 counsel for all Parties without Court approval. This Settlement Agreement may not be discharged
except by performance in accordance with its terms or by a writing signed by the Parties hereto and
approved by the Court.

6 66. Integration Clause – Entire Agreement.

7 This Settlement Agreement and the attached exhibit contain the entire agreement between the
8 Parties relating to the settlement of the Class Action and the transaction contemplated hereby, and all
9 prior or contemporaneous agreements, understandings, representations, and statements, whether oral or
10 written and whether by a party or such party's legal counsel, are merged herein. In entering into this
Settlement Agreement, none of the Parties has relied on any representation or promise not expressly set
forth in this Settlement Agreement. No rights hereunder may be waived except in writing.

11 67. Class Counsel Signatories.

12 It is agreed that because of the anticipated large number of Participating Class Members, it will
13 be impossible or impractical to have each Participating Class Member execute this Settlement
14 Agreement. As such, Class Counsel is signing on behalf of the Participating Class Members. In
15 addition, the Notice will advise Class Members of the binding nature of the Settlement, and their right to
opt-out and/or object, and shall have the same force and effect as if it were executed individually by
each Participating Class Member.

16 68. Confidentiality Preceding Preliminary Approval.

17 The Parties and their respective counsel agree that they will not issue any press releases, initiate
18 any contact with the press, respond to any press inquiry, or have any communication with the press
19 about the fact, amount, or terms of the Settlement prior to the filing of the Motion for Preliminary
20 Approval. Any communication about the Settlement to Class Members prior to the court-approved
21 mailing will be limited to a statement that a settlement has been reached and the details will be
communicated in a forthcoming Court-approved notice.

22 69. No Publicity.

23 Following the filing of the Motion for Preliminary Approval, the Parties understand and agree
24 that there may be media coverage of the settlement not initiated by Plaintiff or Defendant, directly or
25 indirectly, as a result of the public filings. Notwithstanding the foregoing, Plaintiff, Defendant, and their
26 respective counsel agree that no Party shall issue any press release to the news media, nor shall any
27 Party disclose any information regarding this settlement in their marketing materials or firm websites,
nor shall any Party communicate in any way with news media concerning the settlement or the Class
Action. This provision shall not apply to or limit the public filing of motions or other case materials in
the Class Action related to seeking and obtaining Court approval of the proposed Settlement Agreement,
the fees and costs of Class Counsel, the Service Payment to the Class Representative, and the other relief
28 set forth in this Settlement Agreement. This provision also shall not prohibit Class Counsel from

1 responding to specific questions from Class Members or listing the class action lawsuit identified herein
2 by name in support of a motion for appointment as class counsel or motion for attorney's fees.

3 70. Interim Stay of Proceedings.

4 Pending the completion of the approval process, the Parties agree to a stay of all proceedings in
5 the Class Action except those necessary to implement the Settlement itself.

6 71. Declaration of Michael J. Fasy.

7 Defendant agrees that Michael J. Fasy shall furnish a declaration under penalty of perjury in
8 support of approval of this Settlement Agreement that paying any greater amount in settlement than the
9 Maximum Settlement Amount set forth herein will have the potential to imperil the continuing financial
10 viability of Mike's Mobile, Inc. This declaration shall be provided to Class Counsel within fifteen (15)
11 days of the date the Parties execute this Settlement Agreement.

12 72. Notices.

13 Any notices, requests, demands, or other communications required or necessitated by this
14 Settlement Agreement shall be in writing and, except as provided elsewhere in this Settlement
15 Agreement, shall be delivered as follows:

16 (i) If to Plaintiff or Class Counsel, then to:

17 William J. Gorham, Esq.
18 Robert J. Wasserman, Esq.
19 Nicholas F. Scardigli, Esq.
20 Vladimir J. Kozina, Esq.
21 MAYALL HURLEY, P.C.
22 2453 Grand Canal Blvd.
23 Stockton, CA 95207
24 Email: wgorham@mayallaw.com
25 Email: rwasserman@mayallaw.com
26 Email: nscardigli@mayallaw.com
27 Email: vjkozina@mayallaw.com
28

(ii) If to Defendant or Defense Counsel, then to:

Tim Nelson, Esq.
Kyle Owen, Esq.
MEDINA MCKELVEY, LLP
925 Highland Pointe Dr., Suite 300
Roseville, CA 95678
Email: tim@medinamckelvey.com
Email: kyle@medinamckelvey.com

1 73. Resolution of Disputes Arising from Preparation of Settlement Agreement.

2 The Parties agree to seek the guidance of their mediator, Justice Steven Vartabedian (Ret.)
3 regarding any disputes arising from the preparation of this Settlement Agreement, and any such disputes
4 shall ultimately be resolved by the Parties themselves.

5 74. Retention of Jurisdiction by the Court.

6 Following approval of the Settlement and the Court's entry of the Order of Final Approval, the
7 Court shall retain jurisdiction for the purpose of addressing any issues which may arise with respect to
8 the administration of the Settlement or the enforcement of the Settlement terms.

9 75. Choice of Law.

10 This Settlement shall be governed by and construed, enforced and administered in accordance
11 with the laws of the State of California.

12 76. Construction.

13 This Agreement is entered into freely and voluntarily without duress or undue pressure or
14 influence of any kind or nature whatsoever and neither Party has relied on any promises,
15 representations or warranties regarding the subject matter hereof other than as set forth in this
16 Agreement. Each Party has been represented by counsel in the settlement negotiations leading up
17 to, and in connection with the preparation and execution of, this Settlement Agreement. The
18 Parties acknowledge and agree that all Parties had an equal hand in drafting this Agreement so
19 that it shall not be deemed to have been prepared or drafted by one Party or another. All Parties
20 waive the provisions of California Civil Code section 1654 (and any other equivalent state,
21 federal, or local provision), which provides, in part, that "the language of a contract should be
22 interpreted most strongly against the Party who caused the uncertainty to exist."

23 77. Execution in Counterparts.

24 This Agreement may be executed in counterparts, by facsimile and/or by electronic
25 signature/PDF, each of which shall be deemed an original, and all of which together shall constitute one
26 and the same instrument. Any signature to this Agreement transmitted by facsimile or electronically and
27 any copies of any signatures are valid and binding.

28 78. Authority.

 The individuals signing this Agreement represent and warrant that they are authorized to do so.
Those individuals likewise represent and warrant that they have the authority to execute this Agreement
and to take all appropriate action required and permitted to be taken by this Agreement, except such
action that is the prerogative of the Court.

///

///

1 **DATED:** 4-5-22

2 By 
3 ANDY JACQUES
4 Plaintiff

5 **DATED:** April __, 2022

6 By _____
7 _____
8 Defendant MIKE'S MOBILE, INC.

9 **APPROVED AS TO FORM AND CONTENT:**

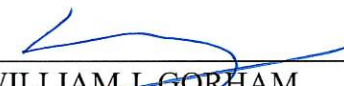
10 **DATED:** April __, 2022

MEDINA MCKELVEY, LLP

11 By _____
12 TIM NELSON
13 KYLE OWEN
14 Attorneys for Defendant

15 **DATED:** 4-5-22

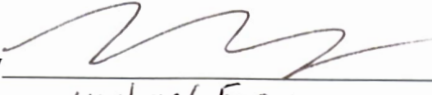
MAYALL HURLEY P.C.

16 By 
17 WILLIAM J. GORHAM
18 ROBERT J. WASSERMAN
19 NICHOLAS F. SCARDIGLI
20 VLADIMIR J. KOZINA
21 Attorneys for Plaintiff and the Putative Class

1 **DATED:**

2 By _____
3 ANDY JACQUES
4 Plaintiff

5 **DATED:** April 5, 2022

6 By  _____
7 Michael Fasy
8 Defendant MIKE'S MOBILE, INC.

9 **APPROVED AS TO FORM AND CONTENT:**

10 **DATED:** April 11, 2022

11 **MEDINA MCKELVEY, LLP**
12 By  _____
13 TIM NELSON
14 KYLE OWEN
15 Attorneys for Defendant

16 **DATED:**

17 **MAYALL HURLEY P.C.**
18 By _____
19 WILLIAM J. GORHAM
20 ROBERT J. WASSERMAN
21 NICHOLAS F. SCARDIGLI
22 VLADIMIR J. KOZINA
23 Attorneys for Plaintiff and the Putative Class
24
25
26
27
28

Exhibit A

MAYALL HURLEY P.C.
WILLIAM J. GORHAM (SBN: 151773)
wgorham@mayallaw.com
ROBERT J. WASSERMAN (SBN: 258538)
rwasserman@mayallaw.com
NICHOLAS J. SCARDIGLI (SBN: 249947)
nscardigli@mayallaw.com
VLADIMIR J. KOZINA (SBN: 284645)
vjkozina@mayallaw.com
2453 Grand Canal Boulevard
Stockton, California 95207-8253
Telephone: (209) 477-3833
Facsimile: (209) 473-4818

Attorneys for Plaintiff Andy Jacques and the Putative Class

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN JOAQUIN

ANDY JACQUES an individual,

Plaintiff,

vs.

**MIKE'S MOBILE, INC., a corporation;
and DOES 1-10, inclusive,**

Defendants.

Case No.:

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR**

- 1. FAILURE TO PAY OVERTIME**
- 2. FAILURE TO PAY MINIMUM WAGE**
- 3. FAILURE TO FURNISH MEAL BREAKS**
- 4. FAILURE TO FURNISH REST BREAKS**
- 5. FAILURE TO FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS**
- 6. FAILURE TO PAY ALL WAGES AT
CESSATION OF EMPLOYMENT**
- 7. FAILURE TO REIMBURSE BUSINESS
EXPENSES**
- 8. VIOLATION OF BUSINESS AND
PROFESSIONS CODE SECTION 17200**
- 9. LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (PAGA)**

JURY TRIAL DEMANDED

1 Plaintiff Andy Jacques bring this class and representative action against Mike's Mobile,
2 Inc.; and Does 1 through 10, for violations of the California Labor Code and the California
3 Business and Professions Code, on behalf of himself and on behalf of all others similarly situated.

4 **PARTIES**

5 1. Andy Jacques ("Jacques" or "Plaintiff") at all times relevant herein was employed in
6 San Joaquin County, California, and was an "employee" as defined by the California Labor Code,
7 and the applicable California IWC Order(s).

8 2. Mike's Mobile, Inc. ("Mike's Mobile" or "Defendant") is a corporation doing
9 business in California and an "employer" as defined by the California Labor Code and the
10 applicable IWC Order(s).

11 3. Mike's Mobile and Does 1 through 10 are collectively referred to as Defendants.

12 4. Plaintiff is not aware of the true names and capacities of the Defendants sued herein
13 as Does 1 through 10, whether individual, corporate, associate, or otherwise and therefore sues
14 such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true
15 names and capacities when ascertained. Plaintiff is informed and believes, and on that basis
16 alleges, that each of the fictitiously named Defendants is responsible in some manner for the
17 occurrences herein alleged and that Plaintiff's injuries and damages herein alleged were legally
18 caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the
19 course and scope of said agency and/or employment, with the knowledge and/or consent of said co-
20 Defendant.

21 5. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
22 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
23 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
24 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times
25 acting within the course and scope of such agency, service, employment partnership, joint venture
26 and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both
27

1 individually and within the course and scope of such agency and/or employment, with the
2 knowledge and/or consent of the remaining Defendants.

3 **VENUE**

4 6. Venue is proper in this court because the unlawful acts alleged herein took place in
5 San Joaquin County, California and Plaintiff's place of employment with Defendants was in San
6 Joaquin County. Plaintiff hereby demands a jury trial.

7 **GENERAL ALLEGATIONS**

8 7. Mike's Mobile provides, sells, and installs screen doors, solar screens, security
9 doors, sliders, as well as offers chimney cleaning services.

10 8. Plaintiff worked for Mike's Mobile as a non-exempt technician from August 2020
11 until his termination on May 13, 2021, and was based in Stockton, California.

12 9. Plaintiff and Mike's Mobile's other technicians, all of whom were non-exempt
13 employees, were issued a company vehicle from which to work at customers' homes. Plaintiff and
14 other current and former non-exempt employees of Mike's Mobile accounted for their time on a
15 timekeeping application in accordance with company policy.

16 10. However, Mike's Mobile's company policies and practices, including its
17 timekeeping, meal and rest break, and payment policies, included several unlawful aspects in
18 violation of the Labor Code.

19 11. Employees were not to punch into the timekeeping application, and thus were not
20 compensated for their work time, until they reached their first job of the day, even though
21 technicians' jobs were commonly in a different city than Stockton, the main store. Consequently, it
22 was not uncommon for Plaintiff and other current and former non-exempt employees to work over
23 an hour per day without compensation. In many instances, because Plaintiff and other non-exempt
24 employees worked more than eight hours per day and forty hours per week, much of this
25 uncompensated time was overtime under California law.

1 12. Employees were not to punch into the timekeeping application, and thus were not
2 compensated for their work time when they were required to pick up materials and load their trucks
3 before traveling to the first job of the day.

4 13. For instance, if Plaintiff needed a screen door for installation, he would commonly
5 need to drive to the Stockton store and load it before heading out to his first job. Plaintiff and other
6 current and former employees were not compensated for this time if it was before their first job of
7 the day.

8 14. Plaintiff and other current and former non-exempt employees were not permitted to
9 take meal breaks, were forced to sign unlawful meal break waivers and were not furnished a
10 second meal break, though they regularly worked in excess of 12 hours per day. Even without
11 accounting for the uncompensated work time described above, Plaintiff and other current and
12 former employees were not afforded meal breaks when working 12 or more hours.

13 15. Plaintiff and other current and former non-exempt employees of Defendant were not
14 furnished with rest breaks and were told by Defendant that the time driving from stop to stop was
15 their rest break. Consequently, Defendant did not relieve Plaintiff or its other current and former
16 non-exempt employees of all duties while "on break."

17 16. Plaintiff and other current and former non-exempt employees were not compensated
18 for the required use of their personal cellular phones for work purposes.

19 17. Plaintiff and other current and former non-exempt technicians were eligible for and
20 at times earned both non-discretionary bonuses and commissions. However, when paying overtime
21 to Plaintiff and its other non-exempt employees, Mike's Mobile failed to incorporate these bonuses
22 and commissions into Plaintiff's or the other non-exempt employees' regular rate of pay for
23 purposes of overtime compensation.

24 18. Because of the violations set forth above the wage statements furnished by Mike's
25 Mobile to its non-exempt employees violated California Labor Code section 226(a) insofar as they
26 failed to accurately show:

- a. The gross wages earned, in violation of section 226(a)(1);
- b. The total hours worked, in violation of section 226(a)(2);
- c. The net wages earned, in violation of section 226(a)(5); and
- d. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

19. Mike's Mobile was, at all times relevant herein, aware of the requirements of California Labor Code section 226.

20. Mike's Mobile has, at all times relevant herein, furnished wage statements to each of its employees pursuant to an established set of policies, procedures and practices.

21. Plaintiff and Mike's Mobile's other current and former non-exempt employees, have suffered injury as a result of Defendants' knowing and intentional failure to comply with California Labor Code section 226(a).

22. Plaintiff and Mike's Mobile's other non-exempt California employees were unable to promptly and easily determine their gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate from the wage statements furnished by Mike's Mobile.

23. From at least four years prior to the filing of this action, Mike's Mobile has adopted and employed unfair business practices. These unfair business practices include, but are not limited to, failing to pay overtime and minimum wage for all hours worked, failing to pay overtime at the legally required rate, failing to reimburse for reasonable business expenses, and failing to furnish meal and rest breaks as required by law.

24. On May 20, 2021, Plaintiff provided written notice ("PAGA Notice") to the Labor and Workforce Development Agency ("LWDA") and Defendant regarding the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support those alleged violations. Plaintiff's notice asserted violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1197, 1197.1, and 2802. Plaintiff also paid the required filing fee of \$75 to the LWDA. A true and correct copy of Plaintiff's LWDA Notice is attached hereto as **Exhibit 1**.

1 25. As of the filing of this Complaint, more than 65 calendar days have elapsed since
2 Plaintiff's written notice. Accordingly, Plaintiff has satisfied the administrative prerequisites under
3 Labor Code section 2699.3 to bring a civil action to recover civil penalties against Defendant
4 pursuant to the Labor Code Private Attorneys General Act of 2004, in addition to other remedies,
5 for violations of the California Labor Code.

6 26. On July 22, 2021, Plaintiff and Defendant, through their respective counsel, agreed
7 to toll all applicable statutes of limitations relating to Plaintiff's claims against Defendant in an
8 individual or representative capacity through October 22, 2021.

9 27. Prior to the expiration of the above tolling period, Plaintiff and Defendant, through
10 their respective counsel, agreed to extend the tolling period through February 14, 2022, or the date
11 Plaintiff commenced an action against Defendant.

12 **CLASS ACTION ALLEGATIONS**

13 28. Plaintiff seeks to maintain this action as a class action as to the First through Eighth
14 Causes of Action. Plaintiff brings this action, on behalf of himself and all others similarly situated,
15 as a class action pursuant to California Code of Civil Procedure Section 382. The class which
16 Plaintiff seeks to represent is defined as follows:

17 All current and former hourly paid or non-exempt employees of Mike's Mobile that
18 worked for Mike's Mobile at any time from July 22, 2017, through the date of trial
19 of this action (the "Class").

20 29. This action has been brought and may be properly maintained as a class action
21 under Code of Civil Procedure section 382 because there is a well-defined community of interest in
22 the litigation and the Class is easily ascertainable:

- 23 a. Numerosity: The Class of persons is so numerous that joinder of all members is
24 impracticable, and the disposition of their claims in a class action is a benefit to
25 the parties and to the Court. Plaintiff is informed and believes, and based
26 thereon alleges, that Defendant has employed more than 100 employees who
27 satisfy the class definition. Although the exact number and identity of Class

members is not presently known, they can be identified in Defendant's records through coordinated discovery pursuant to this class action.

b. Commonality: There are questions of law and fact common to Plaintiff and Class members that clearly predominate over any questions affecting only individual members. These common questions of law and fact include, without limitation:

- i. Whether Defendant incorporated commissions, non-discretionary bonuses, and other items of compensation into their non-exempt employees' rate of pay for purposes of overtime compensation;
- ii. Whether Defendant paid non-exempt employees at least minimum wage for all time worked;
- iii. Whether Defendant paid non-exempt employees all required overtime wages;
- iv. Whether Defendant has a legally-compliant policy and practice of providing meal and rest breaks to its non-exempt employees;
- v. Whether Defendant has paid premium wages for missed meal and rest breaks;
- vi. Whether Defendant has reimbursed non-exempt employees for all reasonable business expenses incurred by those employees;
- vii. Whether Defendant has furnished wage statements that fail to accurately show its non-exempt employees' gross wages earned, net wages earned, hours worked, and applicable rates of pay and all hours worked at each rate;
- viii. Whether Defendant has paid its former non-exempt employees all wages due at termination or within 72 hours of resignation;

ix. Whether Wine & Roses engaged in unfair business practices by failing to properly pay minimum wage and overtime, failing to provide meal and rest breaks and failing to reimburse for reasonable business expenses.

c. Typicality: Plaintiff's claims are typical of the claims of the members of the Class as a whole, all of whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the alleged violations of Defendant. Plaintiff's claims are typical of those of the Class because Defendant subjected Plaintiff and each member of the Class to the same violations alleged herein. The defenses of Defendant, to the extent that such defenses apply, are applicable generally to the whole Class and are not distinguishable as to the proposed class members.

d. Adequacy of Representation: Plaintiff will fairly and adequately protect the interests of all members of the Class, and has retained attorneys with extensive experience in litigation, including class and representative actions. Plaintiff has no interests that conflict with those of the Class. Plaintiff is able to fairly and adequately protect the interests of all members of the Class because it is in his best interest to prosecute the claims alleged herein in order to obtain the full compensation due himself and the other class members.

e. Superiority of Class Action: A class action is superior to any other method available for fairly and efficiently adjudicating the controversy because 1) joinder of individual class members is not practicable; 2) litigating the claims of individual class members would be unnecessarily costly and burdensome and would deter individual claims; 3) litigating the claims of individual class members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendant; 4) class members still working for Defendant may be fearful of retaliation if they were to bring

1 individual claims; 5) class members would be discouraged from pursuing
2 individual claims because the damages available to them are relatively small;
3 and 6) public policy encourages the use of the class actions to enforce
4 employment laws and protect individuals who, by virtue of their subordinate
5 position, are particularly vulnerable.

6 30. Judicial economy will be served by maintenance of this lawsuit as a class action. To
7 process numerous virtually identical individual cases will significantly increase the burden on the
8 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
9 matter. There are no obstacles to effective and efficient management of this lawsuit as a class
10 action by this Court and doing so will provide multiple benefits to the litigating parties including,
11 but not limited to, efficiency, economy, and uniform adjudication with consistent results.

12 31. Notice of a certified class action and any result or resolution of the litigation can be
13 provided to class members by mail, email, publication, or such other methods of notice as deemed
14 appropriate by the Court.

15 **FIRST CAUSE OF ACTION**
16 **VIOLATION OF CALIFORNIA LABOR CODE §§ 510 & 1198**
17 **(Failure to Pay Overtime)**
18 **Against All Defendants**

19 32. Plaintiff hereby realleges and incorporate by reference each and every allegation set
20 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
21 allegations of this cause of action.

22 33. Pursuant to California Labor Code section 510, any work in excess of eight hours in
23 one workday and any work in excess of 40 hours in any one workweek and the first eight hours
24 worked on the seventh day of work in any one workweek shall be compensated at the rate of no
25 less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12
26 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an
27

1 employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall
2 be compensated at the rate of no less than twice the regular rate of pay of an employee.

3 34. Pursuant to California Labor Code section 1198, the maximum hours of work and
4 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
5 standard conditions of labor for employees and the employment of any employee for longer hours
6 than those fixed by the commission or under conditions of labor prohibited by the order is
7 unlawful.

8 35. The “regular rate of pay” includes all remuneration for employment paid to the
9 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings,
10 commissions, non-discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. §
11 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.

12 36. During the relevant time period, Plaintiff and Defendant’s other non-exempt
13 employees regularly worked overtime.

14 37. During the relevant time period, Defendants failed to include commissions, non-
15 discretionary bonuses and/or other items of compensation when determining the “regular rate of
16 pay” for Plaintiff and their other non-exempt employees for purposes of overtime compensation.

17 38. During the relevant time period, and as set forth in greater detail above, Defendants
18 failed to pay employees for all time worked, including overtime.

19 39. During the relevant time period, Defendants intentionally and willfully failed to pay
20 the proper overtime wages due to Plaintiff and the other members of the Class.

21 40. Wherefore, Plaintiff and the other members of the Class have been injured as set
22 forth above and request relief as hereafter provided.

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SECOND CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 1194, 1197, 1197.1
(Failure to Pay Minimum Wage)
Against All Defendants

41. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

42. Labor Code sections 1194 and 1197 provide that the minimum wage established by law in California is the minimum wage that may be paid to employees for every hour worked, notwithstanding any private agreement to the contrary.

43. During the relevant time period, and as set forth in greater detail above, Defendants failed to pay Plaintiff and the Class at least minimum wage for all hours worked, in violation of Labor Code sections 1194 and 1197.

44. Wherefore, Plaintiff and the other members of the Class have been injured as set forth above and request relief as hereafter provided.

THIRD CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226.7, 512
(Failure to Furnish Meal Breaks)
Against All Defendants

45. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

46. Labor Code § 226.7 requires employers to provide employees meal periods as mandated by Order of the Industrial Welfare Commission.

47. Labor Code § 512(a) and the applicable IWC Wage Order(s) provide that an employer may not employ a person for a work period of more than 5 hours per day without providing that employee a meal period of not less than 30 minutes, except that if the total work

1 period per day is no more than six hours, the meal period may be waived by mutual consent of both
2 the employer and employee.

3 48. The applicable Wage Order(s) and Labor Code section 226.7 further require an
4 employer who fails to provide a meal period to pay the employee one hour of pay at the
5 employee's "regular rate of compensation" for each day that a meal period is missed.

6 49. As set forth above, Defendants failed to provide Plaintiff and the other members of
7 the Class with meal breaks as required by the Labor Code and IWC Wage Orders, nor did
8 Defendants pay required premium wages for missed meal breaks.

9 50. As a proximate result of Defendants' actions, Plaintiff and the other members of the
10 Class have suffered harm.

11 51. Wherefore, Plaintiff and the other members of the Class have been injured as set
12 forth above and request relief as hereafter provided.

13 **FOURTH CAUSE OF ACTION**
14 **VIOLATION OF LABOR CODE § 226.7**
15 **(Failure to Furnish Rest Breaks)**
16 **Against All Defendants**

17 52. Plaintiff hereby realleges and incorporates by reference each and every allegation
18 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
19 allegations of this cause of action.

20 53. Labor Code § 226.7 requires employers to provide employees rest periods as
21 mandated by Order of the Industrial Welfare Commission.

22 54. The applicable Wage Order(s) require that employers must authorize and permit
23 nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle
24 of each work period. The rest period is based on the total hours worked daily and must be at the
25 minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction
26 thereof. Employees are not entitled to a rest break if their total daily work is less than three-and-
27 one-half hours.

1 55. The applicable Wage Order(s) and Labor Code § 226.7 further require an employer
2 who fails to provide a meal period to pay the employee one hour of pay at the employee's regular
3 rate for each day that a meal period is missed.

4 56. As set forth above, during her employment, Defendants failed to provide Plaintiff
5 and the Class with rest breaks as required by the Labor Code and IWC Orders.

6 57. As a proximate result of Defendants' actions, Plaintiff and the other members of the
7 Class have suffered harm and seek relief as set forth below.

8 **FIFTH CAUSE OF ACTION**
9 **VIOLATION OF LABOR CODE § 226(a)**
10 **(Failure to Furnish Accurate Itemized Wage Statements)**
11 **Against All Defendants**

12 58. Plaintiff hereby realleges and incorporates by reference each and every allegation
13 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
14 allegations of this cause of action.

15 59. Pursuant to California Labor Code section 226(a) "every employer shall,
16 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
17 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
18 when the wages are paid by personal check or cash, an accurate itemized statement in writing
19 showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (3) the number of
20 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
21 (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the
22 employee is paid, (7) the name of the employee and only the last four digits of his or her social
23 security number or an employee identification number, (8) the name and address of the legal entity
24 that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and
25 corresponding number of hours worked at each hourly rate by the employee and, if the employer is
26 a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary
27 services assignment."

1 60. An employee suffering injury as a result of the knowing and intentional failure by
2 an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all
3 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
4 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed
5 the aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
6 reasonable attorney's fees. Labor Code § 226(e)(1).

7 61. An employee is deemed to suffer injury if the employer fails to provide a wage
8 statement or if the employer fails to provide accurate and complete information as required by any
9 one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
10 and easily determine from the wage statement alone, i) the amount of gross/net wages paid to the
11 employee during the pay period or any of the other information required to be provided pursuant to
12 Labor Code section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the
13 employer, iii) the name and address of the employer and iv) the name of the employee and the last
14 four digits of his or her social security number or employee identification number. Labor Code §
15 226(e)(2)(A) and (B)(i)-(iv). "Promptly and easily determine" means a reasonable person would
16 be able to readily ascertain the information without reference to other documents or information.
17 Labor Code § 226(e)(2)(C).

18 62. As set forth above, Defendants intentionally and willfully failed to furnish accurate
19 itemized wage statements which complied with Labor Code section 226.

20 63. Wherefore, Plaintiff and the other members of the Class, have been injured as set
21 forth above and request relief as hereafter provided.

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1 71. As set forth above, Defendants failed to reimburse Plaintiff and the other members
2 of the Class for all reasonable business expenses, including required use of their personal cellular
3 phones for work purposes.

4 72. Wherefore, Plaintiff and the other members of the Class have been injured as set
5 forth above and request relief as hereafter provided.

6 **EIGHTH CAUSE OF ACTION**
7 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200 *ET SEQ.***
8 **(Unfair Business Practices)**
9 **Against All Defendants**

10 73. Plaintiff hereby realleges and incorporates by reference each and every allegation
11 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
12 allegations of this cause of action.

13 74. The statutory violations, as alleged above, are unfair business practices within the
14 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq.*),
15 and include, but are not limited to failing to pay their non-exempt California employees overtime
16 and sick pay at the appropriate rates, and failure to furnish meal and rest breaks.

17 75. Wherefore, Plaintiff and the other members of the Class have been injured as set
18 forth above and request relief as hereafter provided.

19 **NINTH CAUSE OF ACTION**
20 **VIOLATION OF LABOR CODE SECTION 2698 ET SEQ.**
21 **(Labor Code Private Attorneys General Act of 2004)**
22 **Against All Defendants**

23 76. Plaintiff hereby realleges and incorporates by reference each and every allegation
24 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
25 allegations of this cause of action.

26 77. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which
27 provides for a civil penalty to be assessed and collected by the LWDA for violations of the Labor
28 Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee

1 on behalf of himself or herself and other current or former employees pursuant to the procedures
2 outlined in Labor Code section 2699.3.

3 78. Plaintiff was employed by Defendants and the alleged violations were committed
4 against them during their time of employment. Plaintiff is therefore an aggrieved employee as
5 defined by Labor Code section 2699(c). Other current and former employees are also aggrieved
6 employees in that one or more of the alleged violations were also committed against them during
7 their time of employment with Defendants.

8 79. Pursuant to Labor Code section 2699(f), the civil penalty recoverable in a PAGA
9 action is that which is provided for by the Labor Code or, where no civil penalty is specifically
10 provided, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
11 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
12 subsequent violation.

13 80. Pursuant to California Labor Code section 2699(g), an aggrieved employee may
14 recover the civil penalty on behalf of himself or herself and other current or former employees
15 against whom one or more of the alleged violations was committed. Furthermore, any employee
16 who prevails in any such action shall be entitled to an award of reasonable attorney's fees and costs.

17 81. As set forth above, Defendants violated the California Labor Code by failing to
18 timely pay wages, failing to properly calculate and pay overtime, failing to pay minimum wage,
19 failing to furnish meal breaks, failing to furnish rest breaks, failing to pay all wages at cessation of
20 employment, failing to reimburse business expenses, and failing to furnish accurate itemized wage
21 statements.

22 82. Plaintiff seeks civil penalties on his behalf and on behalf of all other aggrieved
23 employees of Defendants for violations of Labor Code sections 201, 202, 203, 226, 226.7, 510,
24 512, 1197, 1197.1, and 2802.

25 83. Wherefore, Plaintiff and the other aggrieved employees have been harmed as set
26 forth above and request relief as hereafter provided.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. That this Court certify the Class;
2. That this Court certify Plaintiff as the representative of the Class;
3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;
4. That this Court award actual, compensatory, special and general damages as well as restitutionary relief to Plaintiff and the members of the Class;
5. That this Court award penalties and liquidated damages including, but not limited to, those available under Labor Code §§ 203, 226(e), and 226.7, and 1194.2 to Plaintiff and the members of the Class;
6. That this Court award civil penalties pursuant to the PAGA;
7. That this Court award injunctive relief, including that available under Labor Code § 226(h) and Business and Professions Code § 17203;
8. That this Court award statutory attorneys' fees and costs, including those available under Labor Code §§ 218.5, 226(e)(1), 1194, and 2699(g), as well as Code of Civil Procedure § 1021.5;
9. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and
10. That this Court award such other and further relief as the court deems just and proper.

DATED: March 30, 2022

MAYALL HURLEY P.C.

By _____

WILLIAM J. GORHAM
ROBERT J. WASSERMAN
NICHOLAS J. SCARDIGLI
VLADIMIR J. KOZINA
Attorneys for Plaintiff and the Putative Class

Exhibit 1

LAW OFFICES
MAYALL HURLEY

A PROFESSIONAL CORPORATION

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450 N. BRAND BLVD., SUITE 600
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STOCKTON, CALIFORNIA 95207

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STOCKTON, CALIFORNIA 95207-8253

FAX (209) 473-4818
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ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
RACHAEL ALLGAIER

OF COUNSEL
J. ANTHONY ABBOTT

May 20, 2021

SUBMITTED VIA ONLINE CLAIM NOTICE

<https://dir.tfaforms.net/308>

The State of California Labor and Workforce Development Agency

SENT VIA CERTIFIED MAIL

Michael J. Fasy
Mike's Mobile, Inc.
9912 Business Park Dr., Suite 175
Sacramento, CA 95827

Re: Andy Jacques

To Whom It May Concern:

This firm represents Andy Jacques relating to his former employment as an hourly, non-exempt, installer for Mike's Mobile, Inc. In accordance with California Labor Code § 2699.3, this letter shall serve as Mr. Jacques's written notice regarding the following violations, and facts and theories supporting the violations, on his behalf and, as a proxy for the Labor and Workforce Development Agency ("LWDA"), on behalf of current and other former California employees of Mike's Mobile, Inc. Notice to the LWDA has been submitted online, in accordance with the process described on the California Department of Industrial Relations' website at <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

Mr. Jacques worked for Mike's Mobile from August of 2020, until his wrongful termination on May 13, 2021. Mike's Mobile, Inc. provides, sells, and installs screen doors, solar screens, security doors, sliders, as well as offers a chimney cleaning service. It services customers in Northern California. As set forth below, Mr. Jacques is an aggrieved employee due to many labor code violations by Mike's Mobile, Inc.

Mr. Jacques was issued a company vehicle from which to work at customers' homes. Mr. Jacques, and other current and former hourly employees of Mike's Mobile, Inc., accounted for their time on a timekeeping application, according to company policy.

Labor and Workforce Development Agency
Mike's Mobile, Inc./Micheal J. Fasy
Re: Andy Jacques
May 20, 2021
Page 2 of 5

The company policies, including its time keeping, meal and rest break, and payment policies, included at least the following illegal aspects:

- Employees were not to punch into the application, and thus were not compensated for their time, until they reached their first job of the day, even though the jobs were commonly in a different city than Stockton, the main store. Consequently, it was not uncommon for Mr. Jacques, and other former and current employees, to work over an hour a day without compensation.
- Employees were not to punch into the time keeping application, and thus were not compensated for their time, when they needed to pick up materials and load their trucks before traveling to their first job of the day. For instance, if Mr. Jacques needed a screen door for installation, he commonly would need to drive to the Stockton store and load it before heading out to his first job. He and other former and current employees were not compensated for that time if it was before their first job of the day.
- Employees were not permitted to take meal breaks, and were forced to sign waivers, and were not furnished a second meal period even though they commonly worked more than 12 hours. Even without accounting for the uncompensated time stated above, Mr. Jacques and other former and current employees were not afforded meal breaks when they worked 12 hours.
- Employees, including Mr. Jacques and other former and current employees, were not furnished rest breaks and were told that the time driving from stop to stop was their break. Consequently, the employees were not relieved of their duties while "on break."
- Employees were not reimbursed for their cell phones or cell phone service usage, even though they were commonly contacted on their cell phones, or used their cell phones to contact one another, including on a "work chat."
- Mike's Mobile, Inc., failed to incorporate commission or bonuses earned by employees into the regular rate of pay for the purpose of paying employees at the legally required overtime rate. Consequently, employees were commonly paid at a level lower than required by California law.

Mr. Jacques and other former and current employees of Mike's Mobile, Inc. were subjected to each these unlawful practices. As a result, during Mr. Jacques' employment, within the last year, and continuing to date, Mike's Mobile, Inc., has failed to do the following, in violation of the California Labor Code:

1. Pay minimum wages to employees, including Mr. Jacques and other former and current employees, who were not paid for their actual time working in

Labor and Workforce Development Agency
Mike's Mobile, Inc./Micheal J. Fasy
Re: Andy Jacques
May 20, 2021
Page 3 of 5

violation of Labor Code § 1197. The civil penalty for these violations is \$100 per pay period for each affected employee under Labor Code § 1197.1.

2. Pay all overtime due and as required by Labor Code section 510, which requires employers to pay employees for all time worked in excess of eight hours per day and forty hours per week at one-and-one-half the employee's regular rate of pay. As said, because Mike's Mobile, Inc., failed to pay all hours worked in a particular day, which typically involved overtime, it is in violation of Labor Code section 510. Mike's Mobile, Inc., further underpaid overtime wages in pay periods in which employees also earned commissions or bonuses. The civil penalty for these violations is \$50 per pay period per affected employee pursuant to Labor Code § 558.
3. Furnish meal and rest breaks, in violation of Labor Code §§ 226.7, 512 and applicable IWC wage orders.
 - a. Specifically, Mr. Jacques and Mike's Mobile, Inc.'s other former and current employees were not afforded a minimum of ten net consecutive minutes rest break for each four hours worked or major fraction thereof, which is considered to be anything more than two hours. Mr. Jacques and other former and current employees were expected to meet a schedule which did not permit for breaks, this was known to Mike's Mobile, Inc., which advised its employees that their breaks were while traveling between jobs. The civil penalty for these violations is \$50 per pay period per affected employee pursuant to Labor Code § 558.
4. Furnish, to Mr. Jacques and other current and former employees, lunch breaks, even though they commonly worked more than 12 hours in a day. For its part, Mike's Mobile, Inc. knew its employees were not able to take lunch because it required them to waive their first lunch break as its practice and policy. Pursuant to Labor Code § 512, a second lunch may not be waived if an employee works over 12 hours. The civil penalty for these violations is \$50 per pay period per affected employee pursuant to Labor Code § 558.
5. Failed to pay, as is required by Labor Code § 226.7, Mr. Jacques or its other former and current employees, an hour's wage for each day in which a meal break was not furnished, nor did they pay an hour's wage for each day in which a rest break was not furnished. The civil penalty for these violations is \$50 per pay period per affected employee pursuant to Labor Code § 558.

Labor and Workforce Development Agency
Mike's Mobile, Inc./Micheal J. Fasy
Re: Andy Jacques
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6. Failed to reimburse Mr. Jacques and other former employees for the cost of use of their personal cell phones and cell phone service, which was required by its employees to conduct business, in violation of Labor Code § 2802. The civil penalty for these violations is \$100 per affected employee per pay period pursuant to Labor Code § 2699(f).
7. Furnish to its employees, including Mr. Jacques and other former and current employees, itemized wage statements accurately stating the "gross wages earned," "total hours worked," "net wages earned," and "applicable hourly rates ... and the corresponding number of hours worked at each hourly rate" in violation of Labor Code § 226(a)(1), (a)(2), (a)(5) and (a)(9). Because of its failure to pay its employees for their actual hours worked, including overtime, none of its wage statements are accurate as required by said subdivisions of Labor Code § 226(a). The civil penalty for these violations is \$250 per violation 226.3.
8. Pay all wages due at the termination of employment in violation of termination in violation Labor Code §§ 201, 202 and 203. In this respect, because Mike's Mobile, Inc., failed to pay Andy Jacques and other former and current employee's wages, both regular and overtime, for all time worked, it did not pay all wages due at the end of employment. Likewise, because it did not pay the premium wages due for the missed meal and rest breaks, it did not pay all wages due at the cessation of employment. The civil penalty for these violations is, pursuant Labor Code §2699(f), \$100 per violation. Alternatively, a penalty not to exceed 30 days of wages may be applied pursuant to Labor Code § 256.

In addition to these penalties, attorneys' fees and costs are to be awarded to legal counsel to a party acting as proxy to the LWDA pursuant to Labor Code § 2699(g), and any other applicable statute providing for such reimbursement of fees and costs.

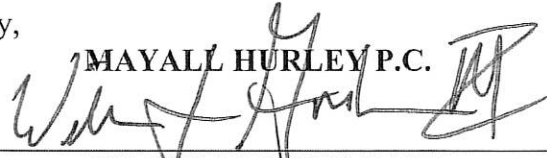
If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or to my client, Mr. Jacques.

If the LWDA does not intend to investigate these violations, Mr. Jacques intends to file a civil complaint against Employers pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on his behalf and, as a proxy for the

Labor and Workforce Development Agency
Mike's Mobile, Inc./Micheal J. Fasy
Re: Andy Jacques
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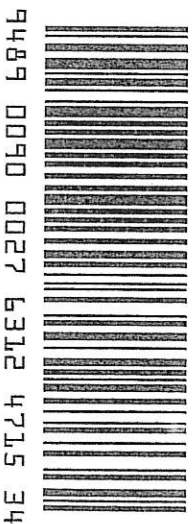
LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

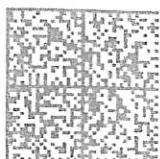
By 
MAYALL HURLEY P.C.
WILLIAM J. GORHAM III

cc: client

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UNITED STATES
POSTAL SERVICE

CERTIFIED MAIL®

Michael J. Fasy
Mike's Mobile, Inc.
9912 Business Park Dr., Suite 175
Sacramento, CA 95827



May 22, 2021

Dear Julie Zeyen:

The following is in response to your request for proof of delivery on your item with the tracking number:
9489 0090 0027 6312 4715 34.

Item Details

Status:	Delivered, Front Desk/Reception/Mail Room
Status Date / Time:	May 22, 2021, 9:56 am
Location:	SACRAMENTO, CA 95827
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™ Return Receipt Electronic

Shipment Details

Weight:	2lb, 4.7oz
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Recipient Signature

Signature of Recipient:	BS
	2757 C19
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Sincerely,
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Exhibit B

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN JOAQUIN

ANDY JACQUES an individual,

Plaintiff,

vs.

MIKE'S MOBILE, INC., a corporation, and
DOES 1-10, inclusive,

Defendants.

Case No.:

NOTICE OF PENDENCY OF CLASS ACTION,
PRELIMINARY APPROVAL OF SETTLEMENT
AND HEARING FOR FINAL APPROVAL

IMPORTANT: THIS LEGAL NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY. YOU ARE NOT BEING SUED.

TO: All current and former hourly paid or non-exempt California employees of Mike's Mobile, Inc. who worked at any time between July 22, 2017 and [DATE OF PRELIMINARY APPROVAL or 90 Days Post-Signing of Settlement].

RE: Notice of settlement of a class action lawsuit for alleged wage and hour violations and announcement of a court hearing that you may choose to attend. You are entitled to receive a payment under the terms of this class action settlement.

YOUR OPTIONS UNDER THIS SETTLEMENT:

DO NOTHING	If you do nothing, you will be included as a member of the class, you will be bound by this Settlement, and you will receive a payment.
OBJECT	You may submit a written objection about why you believe that the Settlement is unfair. Any objection must be received by _____, ____ 2022. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement.
OBJECT AND GO TO A HEARING	If you submit a written objection about why you believe that the Settlement is unfair, you may also speak to the Court about why you believe that the Settlement is unfair. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement.
EXCLUDE YOURSELF	If you wish to be excluded from the Settlement, you must submit a written election not to participate known as an "opt-out" by no later than _____, ____ 2022. If you opt-out, you will not be bound by the Settlement and will not receive a payment.

1. WHAT IS THIS LAWSUIT ABOUT?

Plaintiff Andy Jacques filed this lawsuit on March 30, 2022, in the Superior Court of California, County of San Joaquin, *Jacques v. Mike's Mobile, Inc., et al.*, Case No. [CASE NO], against Mike's Mobile,

1 Inc. (referred to as the “Defendant”). Plaintiff is collectively represented by Mayall Hurley P.C., which has
2 been appointed by the Court to act as attorneys for the Class (referred to as “Class Counsel”).

3 Plaintiff alleges that Defendant failed to properly compensate its non-exempt California employees;
4 specifically, that Defendant 1) failed to properly calculate and pay overtime; 2) failed pay minimum wage;
5 3) failed to furnish meal breaks; 4) failed to furnish rest breaks; 5) failed to furnish accurate itemized wage
6 statements; 6) failed to pay all wages at cessation of employment, and 7) failed to reimburse all reasonable
7 business expenses.

8 Defendant strongly denies liability for all of Plaintiff’s claims and has raised various factual and legal
9 defenses to these claims. Defendant contends that it properly compensated employees in accordance with
10 California law and properly furnished meal and rest breaks to its employees. Defendant has agreed to the
11 proposed settlement without any admission of wrongdoing.

12 **The Court has made no determination about the strengths and weaknesses of the claims or**
13 **contentions of either Plaintiff or Defendant. This Notice is not to be understood as an expression of**
14 **any opinion by the Court as to the merits of the claims or defenses asserted by either side.** There have
15 been ongoing investigations and substantial exchanges of information. As a result of settlement discussions,
16 the Parties reached a class settlement.

17 **2. WHY DID I RECEIVE THIS NOTICE?**

18 The Parties have settled this class action lawsuit. Your employment records indicate that you are a
19 member of the Class. If the Court approves the proposed settlement, your legal rights may be affected. This
20 Notice, which has been approved by the Court, is only a summary. A more detailed document, called the
21 “Class Action Settlement Agreement and Release of Claims”, containing the complete terms of the
22 settlement, is on file with the Court.

23 **3. WHO IS COVERED BY THE CLASS ACTION AND PROPOSED SETTLEMENT?**

24 **A. Who are the Class Members?**

25 The proposed settlement covers the claims of certain current and former employees of Defendant
26 (referred to as the “Class Members” and collectively as the “Class”). The Class consists of all current and
27 former hourly paid or non-exempt employees of Defendant who worked for Defendant at any time during
28 the period of July 22, 2017, through [DATE OF PRELIMINARY APPROVAL or 90 days post-agreement
execution.]

Defendant’s records indicate that you are a member of the Class. Defendant’s records indicate that
you worked for Defendant from [DATES OF EMPLOYMENT].

There are approximately 149 individuals in the Class.

B. What is the Effect of Membership in the Class?

If you are a member of the Class defined above, you are automatically a Participating Class Member
unless you opt-out (i.e., exclude yourself from the Settlement by following the procedures set forth in this
Notice). If the Settlement is approved by the Court, you are entitled to payment under the Settlement and
will be bound by its terms. Individuals who opt-out will not be bound by the Settlement and will not be
eligible to receive a payment.

1 **4. WHAT ARE THE TERMS OF THE SETTLEMENT?**

2 The proposed Settlement was agreed upon between Defendant and Class Counsel after a mediation
3 with Justice Steven Vartabedian (Ret.) on January 26, 2022. Class Counsel believes that this Settlement, the
4 terms of which are summarized below, is fair, reasonable, adequate, and in the best interests of the Class.

5 **A. Overall Summary of the Settlement Terms.**

6 Defendant will pay \$195,000 to settle the claims of the Class (referred to as the "Maximum
7 Settlement Amount"). The Maximum Settlement Amount includes payments to Participating Class
8 Members, the fees and costs of the Settlement Administrator, a required payment to the State of California,
9 required employer-side taxes, the Service Payment to the Class Representative for his service to the Class,
10 and Class Counsel's attorneys' fees and reasonable costs. The remainder, after deduction of these payments
11 is known as the "Net Settlement Amount."

12 **B. Costs of Claims Administrator.**

13 The Parties have agreed to employ Simpluris, Inc. to serve as Settlement Administrator. The
14 Settlement Administrator's fees and costs for administering the Settlement, estimated to be no more than
15 \$15,000, if approved by the Court, will be paid out of the Maximum Settlement Amount.

16 **C. Service Payment to Class Representative.**

17 Plaintiff Andy Jacques has been approved by the Court to serve as Class Representatives. As Class
18 Representatives, they are entitled to payment for their services to the Class. The Parties have agreed, and the
19 Court has preliminarily approved a payment of \$5,000 to Andy Jacques for his services to the Class.

20 **D. Class Counsel's Fees and Costs.**

21 Class Counsel are entitled to attorney's fees and costs for representing the Class. Class Counsel will
22 request for attorneys' fees of one-third of the Maximum Settlement Amount, or \$64,993.50, and
23 reimbursement of declared litigation costs of up to \$10,000. Defendant does not object to the fees and costs
24 sought by Class Counsel. The Court has preliminarily approved payment to Class Counsel in the amount set
25 forth above.

26 **E. Payment to the State of California.**

27 The Settlement allocates \$20,000 of the Maximum Settlement Amount to any civil penalties under
28 the Private Attorneys General Act ("PAGA") that could be awarded as a result of the violations alleged. Of
that amount, \$15,000 (75% of \$20,000) will be paid to the State of California's Labor and Workforce
Development Agency, and the remaining \$5,000 (25% of \$20,000) will be included in the amounts paid to
the Class. Defendant does not object to the PAGA allocation.

F. What Can I Expect to Receive?

The Settlement Shares will be proportionally based upon the number of compensable workweeks each
of the Participating Class Members worked during the Class Period. A workweek shall include any week
where a Participating Class Member recorded actual work time on Defendant's timekeeping system and will
not include weeks where a Participating Class Member only had sick time, vacation time, was on leave, or

1 otherwise did not record any actual work time in Defendant's timekeeping system. The minimum number of
2 workweeks that will be credited to any Participating Class Member will be one (1). Seventy-five percent
3 (75%) of the Net Settlement Fund shall be allocated to the shares paid to Participating Technician Subclass
4 Members ("Technician Subclass Payment Amount") and Twenty-five Percent (25%) of the Net Settlement
5 Fund will be allocated to the shares paid to Participating Non-Technician Subclass Members ("Non-
6 Technician Subclass Payment Amount"). The amount of each Participating Class Member's Settlement
7 Share shall be determined by the Settlement Administrator as follows:

8 Technician Subclass Members:

9 The number of compensable workweeks worked by each of the Participating Technician
10 Subclass Members during the Class Period, divided by the total compensable workweeks
11 worked by all Participating Technician Subclass Members during the Class Period, resulting in
12 a payment ratio for each Participating Technician Subclass Member. Each Participating
13 Technician Subclass Member's payment ratio is then multiplied by the Technician Subclass
14 Payment Amount to determine his or her individual Settlement Share.

15 Non-Technician Subclass Members:

16 The number of compensable workweeks worked by each of the Participating Non-Technician
17 Subclass Members during the Class Period, divided by the total compensable workweeks
18 worked by all Participating Non-Technician Subclass Members during the Class Period,
19 resulting in a payment ratio for each Participating Non-Technician Subclass Member. Each
20 Participating Technician Subclass Member's payment ratio is then multiplied by the
21 Technician Subclass Payment Amount to determine his or her individual Settlement Share.

22 Defendant's records indicate that you are a member of the [REDACTED] Subclass. Its records also indicate
23 that you worked [REDACTED] workweeks between July 22, 2017, through [DATE OF PRELIMINARY APPROVAL
24 or 90 days post-agreement execution.]

25 It is estimated that your total payment will be \$[REDACTED]. It will not be possible to know the exact
26 amount of your payment until the Response Deadline has passed and the Settlement Administrator knows
27 the number of Participating Class Members.

28 Your payment will be treated as 20% wages and 80% non-wage income, interest, and penalties. You
will be issued appropriate tax forms for this amount. You are responsible for any taxes owing on your
payment. Nothing in this Notice, or in any of the settlement documents, is intended to provide any tax
advice and you understand that Defendant, Defendant's counsel, Plaintiff, and Plaintiff's counsel are not
giving any tax advice.

5. **WHAT AM I GIVING UP IF I DO NOT OPT-OUT OF THE SETTLEMENT?**

If the Settlement is approved, Plaintiff Andy Jacques and each Participating Class Member releases
and discharges the Defendant, and its insurers, parents, subsidiaries, affiliated companies, charitable
organizations, partners, trustees, directors, officers, agents, attorneys, servants and employees, past and
present and each of them ("Released Parties") from the following claims and liabilities (the "Released
Claims"):

Any and all claims asserted in the operative class action complaint and Plaintiff's LWDA Notice dated May 20, 2021 ("LWDA Notice"), all claims that could have been asserted in the operative class action complaint and Plaintiff's LWDA Notice during the Class Period, and all claims arising out of the same operative facts during the Class Period, including state wage and hour claims for any and all violations of California's Labor Code and Unfair Competition Law based on Defendant's failure to pay all wages due (including minimum and overtime wages), failure to provide compliant meal periods, failure to authorize and permit compliant rest periods, failure to provide accurate itemized wage statements, failure to timely pay all wages due at the time of termination and during employment, failure to reimburse employees for all business-related expenses, and violations of Business and Professions Code section 17200, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible.

As of the Effective Date, it is understood and agreed that Plaintiff Andy Jacques on behalf of himself, the Labor and Workforce Development Agency, and the other aggrieved employees in the State of California, releases Defendant and Released Parties from any and all claims based upon alleged violations of the Private Attorneys' General Act of 2004, (Labor Code sections 2698 *et seq.*) based upon the facts and theories set forth in Plaintiff's LWDA Notice, including allegations of violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1197, 1197.1, and 2802 during the PAGA Period ("PAGA Released Claims").

If you do NOT exclude yourself by following the procedures set forth in this Notice and the Court approves the proposed Settlement, you will be deemed to have released the aforementioned claims, as appropriate, and will receive a payment. Even if you exclude yourself, you will still be bound by the release of the PAGA Released Claims if the Court approves this settlement.

6. HOW DO I RECEIVE A PAYMENT?

All Class Members will receive a payment under this Settlement unless they opt out. If you are a Class Member and you move or change your address, and you want to receive your payment at your new address, you must send a notice of your change of address to the Settlement Administrator, Simpluris, Inc., **ADDRESS, CITY, STATE ZIP, TELEPHONE, EMAIL.**

7. WHAT ARE MY RIGHTS AND OPTIONS?

If you are a Class Member as defined above, you have the following rights and options under the proposed Settlement:

A. Participate in the Settlement, be represented by Class Counsel, and take no action.

If you take no further action, you will be a Participating Class Member, will be represented by Class Counsel, and will have the right to a share of the Net Settlement Amount. If the Settlement is approved by the Court, you will be bound by the terms of the Settlement and, as set forth above, will be deemed to have released your claims against Defendant. As a Participating Class Member, you will not be charged for the services of Class Counsel.

1 **B. Participate in the Settlement but elect to hire your own attorney.**

2 If you do not wish to be represented by Class Counsel, you may hire your own attorney. Your
3 attorney must send a Notice of Appearance to the Settlement Administrator at the address listed below, so
4 that it is received no later than [60 days from mailing of the Class Notice]. You will be responsible for any
attorneys' fees and costs charged by your attorney.

5 **C. Exclude yourself from the Settlement by opting out.**

6 If you are a Class Member but do not want to participate in the settlement, you may exclude yourself
7 by opting out. If you choose to opt-out, you will lose any right to participate in the settlement and you will
8 not be eligible to receive a share of the Net Settlement Amount. You will be free to pursue any claims you
may have against Defendant on your own behalf, but Class Counsel will not represent you.

9 In order to opt-out, you must notify the Settlement Administrator, in writing, at the address listed
10 below. In order to be effective, your opt-out must be postmarked or delivered to the Settlement
11 Administrator no later than [60 days from the mailing of the Class Notice], and must be signed, contain your
full name, current home (or mailing address), the last four digits of your Social Security number, and written
affirmation of your desire to optout containing the following or substantially similar language:

12 “I elect to opt out of the *Jacques v. Mike’s Mobile, Inc.* class action settlement. I understand that by
13 doing so, I will not be able to participate in the settlement and will not receive a share of the
14 settlement.”

15 If you do not comply with these procedures, you will lose any opportunity to exclude yourself from
16 the settlement, you will be a Participating Class Member, will be represented by Class Counsel, and will
17 receive a share of the Net Settlement Amount. If the settlement is approved by the Court, you will be bound
by the terms of the settlement and, as set forth above, will be deemed to have released your claims against
Defendant.

18 **D. Object to the terms of the Settlement.**

19 If you are dissatisfied with the terms of the Settlement, you may object to the Settlement. All
20 objections and supporting papers must (a) clearly identify the case name and number (i.e., *Jacques v. Mike’s*
21 *Mobile, Inc.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2022-2329), (b) include your full
22 name, address, telephone number, and the last four digits of your Social Security Number, (c) concisely state
the grounds for your objection, (d) indicate whether you are represented by counsel and, if so, identify such
counsel, (e) indicate whether you would like to appear at the Final Approval Hearing, and (e) be signed. To
23 be timely, your objection must be mailed to the Court and the Settlement Administrator, postmarked on or
before [60 days following the mailing of the Notice].

24 If you have filed a timely and proper objection, you also may, but are not required, to appear and
25 present argument at the Final Approval Hearing. Objections not timely postmarked or delivered by [60 days
26 after the mailing of the Notice] will not be considered by the Court. If you file an objection that is not
27 timely, or that does not include the information specified above, you will have no right to appear and present
any argument at the Final Approval Hearing.

28 You may be represented by an attorney at the Final Approval Hearing. Any attorney who will
represent an individual objecting to the settlement must file a notice of appearance with the Court and serve

counsel for all parties on or before [60 days after the mailing of the Notice]. All objections or other correspondence must state the name and number of the case – *Jacques v. Mike's Mobile, Inc.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2022-2329.

8. WHEN IS THE COURT HEARING AND WHAT IS IT FOR?

The Court will hold the Final Approval Hearing in the San Joaquin County Courthouse, Stockton Branch, 180 E Weber Ave., Stockton, California, 95202, on _____, 2022, at 9:00 a.m. in Department 10B, to determine whether the settlement should be finally approved as fair, reasonable and adequate. The Court will also be asked to approve the fees and costs of the Settlement Administrator, the payment to the State of California, the Service Payment to the Class Representatives, and the fees and costs of Class Counsel. **It is not necessary for you to appear at this hearing to participate in the settlement.** If you want to be heard orally in support of or in opposition to the Settlement, either personally or through counsel, you must comply with the procedures set forth above.

9. HOW CAN I GET MORE INFORMATION?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the Class Action Settlement Agreement and Release of Claims. The Class Action Settlement Agreement and Release of Claims, as well as the pleadings and other records in this litigation, including Motion for Preliminary Approval, Motion for Final Approval, and Motion for Attorneys' Fees, Costs and Service Payment, are available by accessing the Court docket in this case through the Court's website at www.sjcourts.org, or by visiting the Clerk of the Court at any time between 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding Court Holidays, in the Clerk's Office located at 180 E Weber Ave., Stockton, California 95202.

If you have questions about the Settlement, you may contact Class Counsel or the Claims Administrator as follows:

<u>Class Counsel</u>	
William J. Gorham, Esq., Robert J. Wasserman, Esq., Nicholas F. Scardigli, Esq., Vladimir J. Kozina, Esq. Mayall Hurley P.C. 2453 Grand Canal Blvd. Stockton, CA 95207 Telephone: (209) 477-3833	
<u>Claims Administrator</u>	
Jacques v. Mike's Mobile, Inc. c/o Simpluris, Inc. ADDRESS CITY, STATE ZIP Telephone: () _____	

PLEASE DO NOT WRITE OR TELEPHONE THE COURT FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

THE COURT HAS APPROVED THIS NOTICE.