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Attorneys for Plaintiffs
ESPERANZA SOLIS and SHAMU MAUGA, individually and on
behalf of all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ESPERANZA SOLIS, on behalf of herself and
other similarly situated non-exempt former and
current employees,

Plaintiffs,

vs.

TIRECO, INC., a California corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No. CIVSB2121647

ASSIGNED FOR ALL PURPOSES TO
HON. DAVID COHN, DEPT. S-26

**STIPULATION AND AGREEMENT FOR
PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Date Action Filed: July 26, 2021
Trial Date: Not Set

1 This Stipulation and Agreement for Settlement of PAGA Representative Action is made and
2 entered into by and between plaintiffs Esperanza Solis (“Solis”) and Shamu Mauga (“Mauga”)
3 (collectively, “Plaintiffs”) and defendants Tireco, Inc. and Tire Distributor Xperts, LLC
4 (collectively “Defendants”) (collectively, the “Parties”) and is made in compromise of disputed
5 claims. The Parties agree that the above-entitled representative action shall be settled on the terms
6 and conditions set forth in this Stipulation, subject to the approval of the Court pursuant to Section
7 2699(1)(2) of the California Labor Code Private Attorneys General Act of 2004, Labor Code section
8 2698, *et. seq.* (“PAGA”).

9 Definitions

10 1. “**Action**” means and refers to *Esperanza Solis, et al., v. Tireco, Inc., et al.*, Case No.
11 CIVSB2121647, which is currently pending in San Bernardino County Superior Court.

12 2. “**Aggrieved Employees**” means all employees who were employed by Defendants
13 as non-exempt employees in California during the PAGA Period.

14 3. The terms “**Agreement**,” “**Settlement**,” and “**Settlement Agreement**” mean this
15 Stipulation and Agreement for PAGA Representative Action Settlement, which the Parties
16 acknowledge sets forth all material terms and conditions of the Settlement between them, and which
17 is subject to Court approval pursuant to Section 2699(1)(2) of the California Labor Code Private
18 Attorneys General Act of 2004, Labor Code section 2698, *et seq.*

19 4. “**Court**” means the California Superior Court, County of San Bernardino.

20 5. “**Defendants**” means Tireco, Inc. and Tire Distributor Xperts, LLC.

21 6. “**Effective Date**” of this Agreement shall be the later of (i) if no person or entity
22 objects to the Settlement, the day after service of notice of entry of the Final Order and Judgment;
23 (ii) if any person or entity objects to the Settlement and the Court nonetheless approves the
24 Settlement, the 61st day after service of notice of entry of the Final Order and Judgment, if no
25 appeal, review, writ, or other challenge has been filed; or (iii) if an appeal, review, writ, or other
26 challenge is sought from the Final Order and Judgment, the day after the Final Order and Judgment
27 is affirmed or the appeal, review, writ, or other challenge is dismissed or denied, and the Final Order
28 and Judgment are no longer subject to further judicial review. The Effective Date is conditioned

upon all of the following occurring: (a) this Agreement has been signed by the Parties, PAGA Counsel, and Defendant's counsel, and (b) the Court has entered the Final Order and Judgment.

7. **"Final Order and Judgment"** means the proposed order granting approval of the Settlement and entering Judgment, in the form substantially similar to that attached to this Agreement as Exhibit 1.

8. **"Gross Settlement Amount"** means a maximum total of \$155,000, which includes all payments owing as a result of this Agreement and includes: the PAGA Payment Fund; Settlement Administration Costs; the Representative Plaintiffs' Enhancement Awards; and PAGA Counsel Attorneys' Fees and Costs as awarded by the Court.

9. **"LWDA Payment"** means a payment to the California Labor Workforce and Development Agency in an amount equal to 75% of the PAGA Payment Fund.

10. **"PAGA Payment Fund"** is the Gross Settlement Amount less all of the following: PAGA Counsel's Attorneys' Fees and Costs, the Representative Plaintiffs' Enhancement Awards, and Settlement Administration Costs. The PAGA Payment Fund is paid from the Gross Settlement Amount and is comprised of the LWDA Payment and PAGA Aggrieved Employee Payment.

11. **"PAGA Aggrieved Employee Payment"** means a payment of 25% of the PAGA Payment Fund, to be distributed to the Aggrieved Employees as set forth below and in accordance with Labor Code section 2699(i).

12. **"PAGA Claim"** means the claim for civil penalties under the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code sections 2698 *et seq.*, "PAGA") alleged in the Action.

13. **"PAGA Counsel"** means Matern Law Group, PC and The Sweeney Law Firm, APC.

14. **"PAGA Period"** means May 22, 2020 through March 8, 2022.

15. **"Solis"** means Plaintiff Esperanza Solis.

16. **"Mauga"** means Plaintiff Shamu Mauga.

17. **"Released Claims"** means all PAGA claims that were or could have been asserted against Defendants in the Action on behalf of the Aggrieved Employees during the PAGA Period based on or arising from the facts or claims alleged in the Action, including those in the Plaintiffs'

1 LWDA Notices. Without limiting the foregoing, and in addition to the foregoing, the release
2 includes all civil penalties under California Labor Code Sections 2699 *et seq.* and claims for
3 Defendants' alleged: unlawful deductions and withholdings from employees' wages; failure to
4 provide meal periods and rest breaks or an additional hour of pay at the regular rate of pay; failure
5 to pay minimum wages; failure to pay and properly calculate overtime wages; failure to furnish
6 accurate itemized wage statements; failure to pay wages for all hours worked; failure to pay all
7 wages due at separation of employment; failure to maintain required records; failure to reimburse
8 for necessary business expenses; violations of California Labor Code sections 201-204, 210, 221-
9 224, 225.5, 226.3, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194 *et seq.*, 1197, 1197.1, 1198, 1199,
10 2800, 2802, 2698 *et seq.*, and the applicable IWC Wage Order provisions. The Released Claims
11 only include claims for civil penalties under PAGA.

12 18. **"Released Parties"** means Defendants and their respective current and former
13 parents or subsidiaries, predecessors or successors, holding companies, affiliated companies or
14 entities, owners, investors, shareholders, members, partners, officers, directors, managers,
15 employees, agents, attorneys, insurers, and assigns.

16 19. **"Representative Plaintiffs"** means Plaintiffs Esperanza Solis and Shamu Mauga.

17 20. **"Settlement Administrator"** means ILYM Group, Inc., or any other neutral third-
18 party administrator chosen by the Parties, subject to approval by the Court.

19 **Recitals**

20 21. On or around March 22, 2021, Solis sent a PAGA Notice to the Labor and Workforce
21 Development Agency ("LWDA"), with a copy to Defendants. On July 26, 2021, Solis filed a Class
22 Action Complaint in the San Bernardino County Superior Court (*Solis v. Tireco, Inc.*, Case No.
23 CIVSB2121647), which includes, among other things, a PAGA claim for civil penalties and an
24 award of reasonable attorneys' fees and costs.

25 22. On or around October 11, 2021, Mauga sent a PAGA Notice to the "LWDA," with
26 a copy to Tireco, Inc. The notice specifically stated: "This notice is hereby given to Tireco and any
27 and all related and/or alter ego companies, corporations, partnerships, and/or business entities[.]"
28 Thus, the notice was given to Tireco Inc.'s related company Tire Distributor Xperts, LLC.

23. On December 13, 2021, the Parties participated in a full day mediation with Lisa Klerman, Esq. of Lisa Klerman Mediation Office. During the mediation, the Parties conducted a thorough investigation into the facts of the Action and the claims asserted by both Representative Plaintiffs. This included exchanging data and information, as well as documents relating to the underlying alleged violations. The negotiations were rigorous and at arm's length. The Parties accepted a mediator's proposal and reached a Settlement on January 7, 2021. The Parties believe the Settlement is fair, reasonable, and adequate. The Parties understand, acknowledge, and agree that this Settlement Agreement constitutes a compromise of the Aggrieved Employees' PAGA Claim, and that it is the desire and intention of the Parties to effect a final and complete resolution of the Released Claims.

24. As a part of the Settlement, the Parties have agreed that PAGA Counsel will amend the Complaint in this Action to: (1) dismiss the class action claims without prejudice based on the arbitration agreements signed by Representative Plaintiffs; (2) add Mauga as a named Plaintiff; and (3) add Tire Distributor Xperts, LLC as a named Defendant.

25. The Parties enter into this Settlement Agreement on a conditional basis. In the event the Court does not enter a Final Order and Judgment, substantially in the form attached as Exhibit 1 to this Settlement Agreement, this Settlement Agreement will be deemed null and void *ab initio* and will be of no force or effect whatsoever, and will not be referred to or utilized for any purpose whatsoever.

26. Defendants deny all of the claims in the Action, and do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations upon all legal, procedural, and factual grounds should this Settlement Agreement not become final. This Settlement Agreement reflects a compromise reached to end litigation in the Action.

27. The Parties stipulate and agree to the following terms of this Settlement Agreement with the intent that this Settlement Agreement finally disposes of the Action, with prejudice.

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Terms and Conditions

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

<u>Gross Settlement Amount of \$155,000.00 Is Broken Down As Follows:</u>	
•	PAGA Counsel Attorneys' Fees not to exceed \$51,666.67
•	PAGA Counsel Attorneys' Costs not to exceed \$15,000.00
•	Settlement Administration Costs, not to exceed \$10,000.00
•	Enhancement Awards of \$2,500.00 to each of the Representative Plaintiffs
•	\$73,333.33 for the PAGA Payment Fund
○	\$55,000.00 for the LWDA Payment
○	\$18,333.33 for the PAGA Aggrieved Employee Payment

29. Subject to final Court approval and the conditions specified in this Agreement, and in consideration of the mutual covenants and promises set forth in this Agreement, Defendants agree to pay the Gross Settlement Amount of \$155,000.00. The Gross Settlement Amount includes payments to be made for PAGA Counsel's Attorneys' Fees and Costs, the PAGA Payment Fund, the Representative Plaintiffs' Enhancement Award, and Settlement Administration Costs. The Parties agree, subject to Court approval, that the Gross Settlement Amount shall be apportioned as follows:

a. **Settlement Administration Fees and Costs:** The fees and costs associated with settlement administration (*e.g.*, preparing and mailing payments to the Aggrieved Employees, tax documentation, etc.) (the "Settlement Administration Costs") will be paid from the Gross Settlement Amount and will not exceed **\$10,000.00**.

b. **PAGA Counsel's Attorneys' Fees and Costs:** The Parties agree that, subject to the Court's review and approval, PAGA Counsel will be paid from the Gross Settlement Amount an amount that is up to 33.33% of the Gross Settlement Amount for attorneys' fees, not to exceed **\$51,666.67**, plus actual attorneys' costs, not to exceed **\$15,000.00**. Except as provided in this Paragraph 29.b, each party will bear its own attorneys' fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Action. If the Court awards a lower amount of attorneys' fees and costs than the amount requested, any amount not awarded will be part of the PAGA Payment Fund to be distributed based on the formula set forth in subsection 29.d, and shall not be a

1 reason to invalidate/terminate this Agreement.

2 c. Representative Plaintiffs' Enhancement Award: The Parties agree that,
3 subject to the Court's review and approval, the Representative Plaintiffs will each receive a
4 **\$2,500.00** enhancement award for their services in bringing the Action on behalf of the Aggrieved
5 Employees, which will be paid from the Gross Settlement Amount. If the enhancement award
6 approved by the Court is less than **\$2,500.00**, then the non-approved amount will be added to the
7 PAGA Payment Fund to be distributed based on the formula set forth in subsection 29.d, and shall
8 not be a reason to invalidate/terminate this Agreement.

9 d. PAGA Payment Fund: After deducting PAGA Counsel's Attorneys' Fees
10 and Costs, the Representative Plaintiffs' Enhancement Award, and Settlement Administration Costs
11 from the Gross Settlement Amount, the remaining amount will comprise the PAGA Payment Fund.
12 The PAGA Payment Fund is comprised of the LWDA Payment and the PAGA Aggrieved Employee
13 Payment. The PAGA Payment Fund of approximately **\$73,333.33** shall be allocated 75% to the
14 LWDA Payment, which is estimated to total **\$55,000.00** (**\$73,333.33** x 75%). The remaining 25%
15 of the PAGA Payment Fund, estimated to total **\$18,333.33** (**\$73,333.33** x 25%), shall be allocated
16 to the PAGA Aggrieved Employee Payment to be paid to the Aggrieved Employees on a *pro rata*
17 basis based on pay periods worked during the PAGA Period, as set forth below, which shall be
18 referred to as the Aggrieved Employee's "**Individual PAGA Payment.**"

19 Example:

20 Aggrieved Employee A was actively employed during the PAGA Period for 25 pay periods.
21 All Aggrieved Employees were actively employed a combined total of 3,000 pay periods during the
22 PAGA Period. Aggrieved Employee A's Individual PAGA Payment would be calculated as
23 follows:

- 24 ➤ 25 pay periods for Aggrieved Employee A ÷ 3,000 total pay periods for all Aggrieved
25 Employees = 0.83%.
26 ➤ Aggrieved Employee A is entitled to an Individual PAGA Payment in an amount that
27
28

1 is 0.83% of the PAGA Aggrieved Employee Payment.¹

2 e. Taxes and Reporting: The Individual PAGA Payments will be treated as non-
3 wage income to the Aggrieved Employees and reported by the Settlement Administrator on IRS
4 Form 1099.

5 30. **Release by Aggrieved Employees and State of California.**

6 a. Terms of Release. In exchange for the consideration recited in this
7 Settlement Agreement, Solis and Mauga, as representatives for the State of California and all
8 Aggrieved Employees, and on behalf of the State of California, all Aggrieved Employees,
9 themselves, and their current, former, and future heirs, executors, administrators, attorneys, agents,
10 and assigns, will forever completely release and discharge the Released Parties of any and all
11 Released Claims. The Aggrieved Employees and the State of California are deemed by operation
12 of the Final Order and Judgment to have agreed not to sue or otherwise make a claim against any of
13 the Released Parties for any Released Claims.

14 b. No Claims Based On Stipulation and Agreement. No Aggrieved Employee
15 will have any claim against any of the Released Parties, Defendants' counsel, Representative
16 Plaintiffs, or PAGA Counsel, based on errors in administering claims or performing the mailing
17 and skip-tracing requirements of the Settlement Administrator under this Agreement.

18 31. **General Release By Representative Plaintiffs.**

19 a. Terms of Release. In exchange for the consideration recited in this
20 Settlement Agreement, including the Representative Plaintiffs' Enhancement Awards, the
21 Representative Plaintiffs, on behalf of themselves and their current, former, and future heirs,
22 executors, administrators, attorneys, agents, and assigns, do hereby and forever release, waive,
23 acquit and discharge the Released Parties from all claims (known or unknown) which they have,
24 had or might otherwise have had against the Released Parties, from the beginning of time to the date
25 they sign this Agreement, regarding any aspect of their employment including, but not limited to,
26 the Released Claims, any common law or statutory torts, any federal, state or governmental
27

28 ¹ The Individual PAGA Payment will be rounded to the nearest penny with .5 rounded down.

1 constitution, statute, regulation or ordinance, and any claim for wages, tips or any other
2 compensation or benefit.

3 b. California Civil Code Section 1542. Upon the Effective Date, the
4 Representative Plaintiffs will be deemed to have, and by operation of the Final Order and Judgment
5 will have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions,
6 rights, and benefits of section 1542 of the California Civil Code which provides as follows:

7 **“A general release does not extend to claims that the creditor or releasing party**
8 **does not know or suspect to exist in his or her favor at the time of executing the**
9 **release and that, if known by him or her, would have materially affected his or**
10 **her settlement with the debtor or released party.”**

11 a. No Other Actions. The Representative Plaintiffs are deemed by operation of
12 the Final Order and Judgment to have agreed not to sue or otherwise make any claim against any of
13 the Released Parties based upon any action, event, or occurrence prior to the date they sign this
14 Settlement Agreement.

15 32. **Request For Final Order and Judgment.**

16 a. Upon execution of this Agreement, the Representative Plaintiffs shall
17 promptly file a stipulation or unopposed motion with the Court requesting approval of this
18 Settlement by submitting a proposed Final Order and Judgment, in a form substantially similar to
19 Exhibit 1.

20 b. The Representative Plaintiffs shall not file the stipulation or unopposed
21 motion requesting final approval or final judgment with the Court until Defendants have reviewed
22 and approved it, and by which approval will not be unreasonably withheld.

23 c. On the date the Representative Plaintiffs file the stipulation or unopposed
24 motion discussed in this Paragraph, the Representative Plaintiffs will also submit to the LWDA a
25 notice of the Settlement enclosing a copy of the Settlement Agreement. The Representative
26 Plaintiffs' notice of the Settlement to the LWDA will comply with the notice requirement of PAGA.

27 d. The Representative Plaintiffs shall also file and serve an amended Complaint
28 in the Action, and any necessary notice to the LWDA, in order to effectuate the Settlement described
herein.

1 33. **Settlement Funding.**

2 a. Upon the Court entering the Final Order and Judgment, and within 7 days
3 after the Effective Date, the Settlement Administrator shall send Defendants' counsel electronic
4 wiring instructions to fund the Gross Settlement Amount.

5 b. Within 21 days after the Effective Date, Defendants shall wire to the
6 Settlement Administrator the Gross Settlement Amount (the "**Funding Date**").

7 c. Within 45 days after the Effective Date, the Settlement Administrator shall
8 issue all payments required by this Agreement (the "**Payment Date**").

9 34. **PAGA List.** Within 15 days after the Effective Date, Defendants will provide a
10 PAGA List to the Settlement Administrator which will identify all Aggrieved Employees by name,
11 social security number, and last known home address ("**PAGA List**"). The PAGA List will also
12 contain the number of pay periods credited to each Aggrieved Employee during the PAGA Period.

13 35. **List Of Individual Settlement Amounts.** Within 15 days after the Settlement
14 Administrator receives the PAGA List, the Settlement Administrator will provide to PAGA Counsel
15 and Defendants' counsel a Proceeds List reflecting the Individual PAGA Payment for each
16 Aggrieved Employee ("**Proceeds List**"). The Proceeds List provided to PAGA Counsel will not
17 include the Aggrieved Employees' names, social security numbers or contact information but will
18 include pay period information.

19 36. **PAGA Payments to Aggrieved Employees.**

20 a. On the Payment Date, the Settlement Administrator will mail to each
21 Aggrieved Employee, via first-class United States Mail, the following: (a) the PAGA Settlement
22 Notice in English and Spanish, attached as Exhibit 2 to this Agreement and (b) their Individual
23 PAGA Payment (collectively, the "**PAGA Packet**").

24 b. Prior to mailing the PAGA Packet, the Settlement Administrator will update
25 all addresses using the National Change of Address System (NCOA). In the event that a PAGA
26 Packet is returned to the Settlement Administrator with a forwarding address, the Settlement
27 Administrator will re-send the PAGA Packet to the forwarding address identified. If no forwarding
28 address is provided, then the Settlement Administrator will promptly conduct a "standard search,"

1 sometimes called, "Skip Trace" or "Credit Header" searches, to locate a better address. If a better
2 address is found, the Settlement Administrator will promptly re-send the PAGA Packet. If a better
3 address is not found or the PAGA Packet is ultimately returned without a forwarding address, neither
4 the Settlement Administrator, Defendants, Defendant's counsel, or PAGA Counsel shall be required
5 to take further action.

6 c. Aggrieved Employees shall have 180 calendar days after the date the PAGA
7 Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee's
8 check is not cashed within that period, the settlement payment check will be voided and a stop-
9 payment will be issued. Neither Defendants, Defendants' counsel, Representative Plaintiffs, nor
10 PAGA Counsel will have any liability for lost or stolen settlement payment checks, forged
11 signatures on settlement payment checks, unauthorized negotiation of settlement payment checks,
12 or failure to timely cash a settlement payment check within the 180 day period.

13 d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus any
14 accrued interest that has not otherwise been distributed pursuant to order of the Court, shall be
15 distributed to the State Controller's Office, Unclaimed Property Division in the name(s) of the
16 employee(s) who did not claim the funds.

17 37. **Payments of Representative Plaintiffs' Enhancement Award, Attorneys' Fees**
18 **and Costs, and the LWDA Payment.**

19 a. No later than the Payment Date, the Settlement Administrator will pay from
20 the Gross Settlement Amount the Representative Plaintiffs' Enhancement Award as awarded by the
21 Court. The payment will be made by sending to PAGA Counsel two checks payable to: (i)
22 "Esperanza Solis" and (ii) "Shamu Mauga" in the amount of the Court-approved Representative
23 Plaintiffs' Enhancement Award. This payment is conditional upon PAGA Counsel providing
24 Defendants' counsel with a completed Form W-9 for the Representative Plaintiffs.

25 b. No later than the Payment Date, the Settlement Administrator will pay from
26 the Gross Settlement Amount to PAGA Counsel their Court-approved Attorneys' Fees and Costs.
27 Such payment is conditional upon PAGA Counsel providing the Settlement Administrator with
28 completed Form W-9s.

1 c. No later than the Payment Date, the Settlement Administrator will pay the
2 LWDA Payment from the PAGA Payment Fund by issuing a check in the approximate amount of
3 **\$55,000.00** (75% of the PAGA Payment Fund) payable to “California Labor Workforce and
4 Development Agency.”

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

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

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

19 41. **Non-Admission Of Liability.** The Parties enter into this Agreement to resolve the
20 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
21 litigation. In entering into this Agreement, Defendants do not admit, and specifically deny, that they
22 have violated any federal, state, or local law; violated any regulations or guidelines promulgated
23 pursuant to any statute or any other applicable laws, regulations or legal requirements; violated or
24 breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful
25 conduct with respect to the Action. Neither this Agreement, nor any of its terms or provisions, nor
26 any of the negotiations connected with it, shall be construed as an admission or concession by
27 Defendants of any such violations or failures to comply with any applicable law. Except as
28 necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and

provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendants or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

42. **Effective Date of Defendants' Obligations Under This Agreement.**

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

43. **Nullification.** If: (1) the Court should for any reason fail to enter the Final Order and Judgment without material modification; or (2) the Court's Final Order and Judgment is reversed or modified as to any material term as defined above, or declared or rendered void as to any material term as defined above, then (a) the Settlement Agreement shall become null and void; and (b) the Parties will revert to their respective positions immediately prior to reaching the settlement.

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

45. **No Publicity.** The Representative Plaintiffs and their counsel agree that the terms of this Settlement Agreement (including, but not limited to, the Gross Settlement Amount), the negotiations leading to the execution of this Settlement Agreement, and the Settlement Agreement itself, shall not be discussed with or publicized or promoted to the media (including, without limitation, legal periodicals and publications such as "Jury Verdicts," or disclosure of the Settlement

1 Agreement on any website of Plaintiffs' counsel), or the public at large, without the advance written
2 consent of Defendants. The Parties intend that this Paragraph shall prohibit the Representative
3 Plaintiffs and/or their counsel from discussing, answering questions about, promoting or publicizing
4 the Settlement Agreement, its terms, or the negotiations leading to the Settlement Agreement with
5 anyone other than the Court or those individuals necessary to effectuate the terms of the Agreement
6 (which include Aggrieved Employees, the Court, and the LWDA, on which no publicity or
7 communication restrictions will be placed). Notwithstanding the foregoing, the Representative
8 Plaintiffs, and their counsel: (1) may tell the public in general only that certain claims "have been
9 resolved by the Parties," and (2) may disclose the terms of the Settlement Agreement (a) in
10 appropriate filings with the Court in this case; (b) where required by law (e.g., income tax returns);
11 and (c) to accountants or other tax professionals for the purpose of preparing tax returns.

12 46. **Entire Agreement.** This Settlement Agreement constitutes the entire integrated
13 agreement between the Parties relating to the Action, and no oral representations, warranties, or
14 inducements have been made to any party concerning this Settlement Agreement other than the
15 representations, warranties, and covenants contained and memorialized in this Settlement
16 Agreement.

17 47. **Authorization to Act.** PAGA Counsel warrants and represents that they are
18 authorized by the Representative Plaintiffs, and counsel of record for Defendants warrants that they
19 are authorized by Defendants, to take all appropriate action required or permitted to be taken by
20 such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other
21 documents required to effectuate the terms of this Settlement Agreement, except for any documents,
22 including but not limited to this Settlement Agreement, that are required to be executed by the
23 Parties.

24 48. **Modification Only In Writing.** This Settlement Agreement may be amended or
25 modified only by a written instrument signed by all Parties or their successors in interest.

26 49. **Binding On Successors.** This Settlement Agreement is binding upon and will inure
27 to the benefit of the Parties to this Agreement, as well as their respective attorneys, past, present,
28 and future predecessors, successors, shareholders, officers, directors, employees, agents, trustees,

1 representatives, administrators, fiduciaries, assigns, insurers, executors, partners, parent
2 corporations, subsidiaries, and related or affiliated entities.

3 50. **No Prior Assignments.** The Representative Plaintiffs are deemed by operation of
4 the Final Order and Judgment to represent, covenant, and warrant that they have not directly or
5 indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
6 person or entity any portion of any liability, claim, demand, cause of action, or rights released and
7 discharged by them by this Agreement.

8 51. **Governing Law.** All terms of this Settlement Agreement will be governed by and
9 interpreted according to the laws of the State of California, without giving effect to conflicts of laws
10 principles.

11 52. **Counterparts.** This Settlement Agreement may be executed in one or more
12 counterparts. All executed counterparts and each of them will be deemed to be one and the same
13 instrument. Counsel for the Parties will exchange among themselves signed counterparts.

14 53. **Headings For Convenience Only.** The descriptive headings of any paragraphs or
15 sections of this Settlement Agreement are inserted for convenience of reference only and do not
16 constitute a part of this Settlement Agreement.

17 54. **Construction Of This Agreement.** The Parties agree that the terms and conditions
18 of this Settlement Agreement are the result of arms-length negotiations between the Parties and that
19 this Settlement Agreement will not be construed in favor of or against any Party by reason of the
20 extent to which any Party, or their or its counsel participated in the drafting of this Agreement. This
21 Settlement Agreement constitutes the entire agreement between the Parties. Except as expressly
22 provided in this Agreement, this Settlement Agreement has not been executed in reliance upon any
23 other oral or written representations or terms and no such extrinsic oral or written representations or
24 terms will modify, vary or contradict the terms of this Settlement Agreement. In entering this
25 Settlement Agreement, the Parties explicitly recognize California Civil Code section 1625 and
26 California Code of Civil Procedure section 1856(a), which provide that a written agreement is to be
27 construed according to its terms and may not be varied or contradicted by extrinsic evidence. The
28 Representative Plaintiffs and Defendants had available to them the advice and assistance of

1 independent counsel. As such, neither the Representative Plaintiffs nor Defendants may claim that
2 any ambiguity in this Settlement Agreement should be construed against the other.

3 55. **Corporate Signatories.** Any person executing this Settlement Agreement or any
4 related document on behalf of a corporate signatory warrants and promises for the benefit of all
5 Parties that such person has been duly authorized by such corporation to execute this Settlement
6 Agreement or any related document.

7 56. **Representation By Counsel.** All of the Parties to this Settlement Agreement
8 acknowledge that they have been represented by counsel throughout all negotiations which preceded
9 the execution of this Settlement Agreement and that this Agreement has been executed with the
10 consent and advice of counsel.

11 57. **Attorneys' Fees And Costs.** Except as otherwise provided in this Agreement, the
12 Parties will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred
13 by them or arising out of the Action and will not seek reimbursement thereof from any Party to this
14 Settlement Agreement. In the event of a proven material breach of this Agreement, the breaching
15 party will be required to pay the prevailing Party's reasonable attorneys' fees and costs incurred in
16 enforcing this Agreement.

17 **IT IS SO AGREED.**

18 **[SIGNATURES ON FOLLOWING PAGE]**
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2 DATED: November ⁰⁵, 2022 ESPERANZA SOLIS

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Esperanza Solis (Nov 5, 2022 20:36 PDT)

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6 Esperanza Solis

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8 DATED: November __, 2022 SHAMU MAUGA

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12 Shamu Mauga

13 DATED: October __, 2022 TIRECO, INC.

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16 By:
Tireco, Inc.

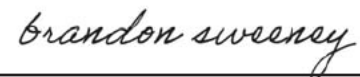
17 DATED: October __, 2022 TIRE DISTRIBUTOR XPERTS, LLC

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20 By:
Tire Distributor Xperts, LLC

21 DATED: November __, 2022 APPROVED AS TO FORM AND AGREEMENT TO BE
22 BOUND BY PARAGRAPH 45:

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25 Matthew J. Matern
Mikael H. Stahle
MATERN LAW GROUP, P.C.
Counsel for Plaintiffs Esperanza Solis and Shamu Mauga

26 DATED: November 8, 2022 APPROVED AS TO FORM AND AGREEMENT TO BE
27 BOUND BY PARAGRAPH 45:

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Brandon Sweeney
The Sweeney Law Firm
Counsel for Plaintiffs Esperanza Solis and Shamu Mauga

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Esperanza Solis

DATED: November 3, 2022 SHAMU MAUGA


Shamu Mauga (Nov 3, 2022 18:15 PDT)

Shamu Mauga

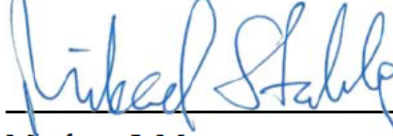
DATED: October __, 2022 TIRECO, INC.

By:
Tireco, Inc.

DATED: October __, 2022 TIRE DISTRIBUTOR XPERTS, LLC

By:
Tire Distributor Xperts, LLC

DATED: November 8, 2022 APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPH 45:



Matthew J. Matern
Mikael H. Stahle
MATERN LAW GROUP, P.C.
Counsel for Plaintiffs Esperanza Solis and Shamu Mauga

DATED: October __, 2022 APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPH 45:

Brandon J. Sweeney
The Sweeney Law Firm
Counsel for Plaintiffs Esperanza Solis and Shamu Mauga

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DATED: October __, 2022

ESPERANZA SOLIS

Esperanza Solis

DATED: October __, 2022

SHAMU MAUGA

Shamu Mauga

DATED: October 10, 2022

TIRECO, INC.

Erika Lieser
By: **ERIKA LIESER**
Tireco, Inc.

DATED: October 10, 2022

TIRE DISTRIBUTOR XPERTS, LLC

Erika Lieser
By: **ERIKA LIESER**
Tire Distributor Xperts, LLC

DATED: October __, 2022

APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPH 45:

Matthew J. Matern
Mikael H. Stahle
MATERN LAW GROUP, P.C.
Counsel for Plaintiffs Esperanza Solis and Shamu Mauga

DATED: October __, 2022

APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPH 45:

Brandon J. Sweeney
The Sweeney Law Firm
Counsel for Plaintiffs Esperanza Solis and Shamu Mauga

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DATED: Nov. 11, 2022

APPROVED AS TO FORM:



Edson K. McClellan
RUTAN & TUCKER, LLP
Counsel for Defendants Tireco, Inc. and Tire Distributor
Xperts, LLC

Exhibit 1

MATERN LAW GROUP, PC
MATTHEW J. MATERN (SBN 159798)
MIKAEL H. STAHLE (SBN 182599)
1230 Rosecrans Avenue, Suite 200
Manhattan Beach, CA 90206
Telephone: (310) 531-1900
Facsimile: (310) 531-1901
Email: mmatem@maternlawgroup.com
Email: mstahle@maternlawgroup.com

THE SWEENEY LAW FIRM
Brandon J. Sweeney (SBN 278532)
15233 Ventura Blvd., Suite 500
Sherman Oaks, CA 91403
Telephone: (323) 486-2508
Facsimile: (747) 998-1201
Email: bsweenev@thesweeneylawfirm.com

Attorneys for Plaintiffs
ESPERANZA SOLIS and SHAMU MAUGA, individually and on
behalf of all aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

ESPERANZA SOLIS, on behalf of herself and
other similarly situated non-exempt former and
current employees,

Plaintiffs,

vs.

TIRECO, INC., a California corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No. CIVSB2121647

ASSIGNED FOR ALL PURPOSES TO
HON. DAVID COHN, DEPT. S-26

**[PROPOSED] ORDER AND JUDGMENT
GRANTING MOTION FOR FINAL
APPROVAL OF PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT**

Date Action Filed: July 26, 2021
Trial Date: Not Yet Scheduled

[PROPOSED] ORDER AND JUDGMENT

This matter came on for hearing on _____, 2022 at _____ in Dept. S-26 of the above-captioned Court on plaintiffs' Esperanza Solis ("Solis") and Shamu Mauga ("Mauga") (collectively, "Plaintiffs") unopposed motion for final approval of a settlement agreement pursuant to the California Labor Code Private Attorneys General Act ("PAGA") (the "Settlement").

Having received and considered the Settlement Agreement, the supporting papers filed by Plaintiffs, and the evidence and arguments received by the Court, the Court grants approval of the Settlement and **HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:**

1. Except as otherwise defined in this Order and Judgment ("Order"), all capitalized terms have the same meaning as defined in the Settlement Agreement that is attached as **Exhibit 1** to this Order.

2. The California Labor Workforce and Development Agency ("LWDA") has been provided notice of the Settlement in accordance with PAGA, California Labor Code §§ 2699(1)(2) and (1)(4). In particular, on the date Plaintiffs filed their motion seeking approval of the Settlement with the Court, they submitted to the LWDA a notice of the Settlement enclosing a copy of the Settlement Agreement. Plaintiffs' notice of the Settlement to the LWDA complied with the notice requirements of PAGA.

3. The Court confirms approval of the Settlement as to Representative Plaintiffs, the Aggrieved Employees, and the State of California.

4. The Court has jurisdiction over the subject matter of this litigation, over all Aggrieved Employees, and over those persons undertaking affirmative obligations under the Settlement.

5. The Settlement Agreement is approved pursuant to Labor Code § 2699(1)(2).

6. The PAGA Settlement Notice to Aggrieved Employees, attached as **Exhibit 2** to this Order, fairly and adequately describes the Action, the approved Settlement, and is the best notice practicable under the circumstances.

7. The Court finds that each Aggrieved Employee and the State of California, in

1 accordance with the Settlement, releases all Released Claims against the Released Parties.

2 8. The Gross Settlement Amount, PAGA Payment Fund, and the methodology used to
3 calculate the LWDA Payment and PAGA Aggrieved Employee Payment (which is comprised of
4 the Individual PAGA Payments), in accordance with the Settlement is approved.

5 9. The Court approves ILYM Group, Inc. to act as the Settlement Administrator. The
6 Court awards the Settlement Administrator in this Action its actual fees and costs in accordance
7 with the terms of the Settlement Agreement, in an amount of \$_____.

8 10. The Court approves Matern Law Group, PC and The Sweeney Law Firm, APC as
9 PAGA Counsel.

10 11. The Court awards PAGA Counsel attorneys' fees in the amount of \$51,666.67 and
11 attorneys' costs in the amount of \$_____, which the Court finds to be fair and
12 reasonable. The Court authorizes the Settlement Administrator to make these payments, in
13 accordance with the terms of the Settlement Agreement.

14 12. The Court finds the Representative Plaintiffs' Enhancement Award in the sum of
15 \$5,000.00 total, \$2,500.00 to each of the Representative Plaintiffs, to be fair and reasonable. The
16 Court authorizes the Settlement Administrator to pay the Representative Plaintiffs' Enhancement
17 Award, in accordance with the terms of the Settlement Agreement.

18 13. The Court authorizes the Settlement Administrator to calculate the PAGA Payment
19 Fund, inclusive of the LWDA Payment and PAGA Aggrieved Employee Payment (which is
20 comprised of the Individual PAGA Payments), in accordance with the terms of the Settlement
21 Agreement.

22 14. The Court finds that the LWDA Payment of \$_____ as the LWDA's
23 share of the settlement of civil penalties is fair and reasonable. The Court authorizes the Settlement
24 Administrator to pay the LWDA Payment, in accordance with the terms of the Settlement
25 Agreement.

26 15. The Court finds that the PAGA Aggrieved Employee Payment of
27 \$_____ as the Aggrieved Employees' share of the settlement of civil penalties is fair
28 and reasonable. The Court authorizes the Settlement Administrator to pay the PAGA Aggrieved

1 Employee Payment, in accordance with the terms of the Settlement Agreement.

2 16. Checks for Individual PAGA Payments sent to Aggrieved Employees shall be valid
3 for 180 days after issuance. Funds remaining from any checks for Individual PAGA Payments
4 uncashed after 180 days will be dispersed to the State Controller's Unclaimed Property Fund in the
5 name(s) of the employee(s) who did not cash their checks, in accordance with the terms of the
6 Settlement Agreement.

7 17. Upon completion of the Settlement, the Settlement Administrator will provide
8 written certification of the completion to the Court and counsel for the Parties, which shall be filed
9 with the Court on or before _____.

10 18. Without affecting the finality of this Order and entry of judgment, the Court retains
11 exclusive and continuing jurisdiction over the above-captioned action for purposes of supervising,
12 administering, implementing, and enforcing this Order and the Settlement.

13 19. Nothing in this Order or the Settlement shall be construed as an admission or
14 concession by any party. The Settlement and resulting Order and entry of judgment simply represent
15 a compromise of disputed allegations.

16 20. The Court enters final judgment in accordance with the terms of the Settlement
17 Agreement and this Order.

18 21. Plaintiffs are directed to submit a copy of this Order and entry of judgment to the
19 LWDA within 10 days of the date of this Order and entry of judgment
20

21 **IT IS SO ORDERED.**

22 DATED: _____, 2022

Honorable David Cohn
Judge of the Superior Court

Exhibit 2

[Date]

[SETTLEMENT ADMINISTRATOR NAME]

[STREET ADDRESS]

CITY, STATE ZIP CODE]

[Employee Name]

[Employee Street Address]

[City, State Zip]

Re: PAGA Settlement Payment

Dear Current or Former Tireco, Inc. or Tire Distributor Xperts, LLC Employee:

You have received this notice because Tireco, Inc. or Tire Distributor Xperts, LLC's (collectively, "Defendants") records indicate that you have worked for one or both of Defendants as an hourly, non-exempt employee at some time between May 22, 2020 through March 8, 2022. This notice relates to the settlement of the lawsuit entitled *Esperanza Solis, et al., v. Tireco, Inc., et al.*, San Bernardino County Superior Court, Case No. CIVSB2121647 (the "Lawsuit").

In the Lawsuit, Plaintiffs Esperanza Solis and Shamu Mauga (collectively, "Plaintiffs") on behalf of themselves and all other Aggrieved Employees, sought civil penalties pursuant to the California Private Attorneys General Act ("PAGA"). A PAGA action is an action that allows Plaintiffs to attempt to recover penalties on behalf of the State of California and on behalf of employees who Plaintiffs claim were "aggrieved" by alleged wage and hour violations on the part of Defendants. Further, a PAGA action is an action for civil penalties in which the State of California receives a portion of any penalties collected. The settlement of the Lawsuit releases all claims for civil penalties and associated fees or costs for all PAGA claims that were or could have been asserted against Defendants in the Lawsuit based on or arising from the facts or claims alleged in the Action, including those in the Plaintiffs' LWDA Notices, including Defendants alleged: unlawful deductions and withholdings from employees' wages; failure to provide meal periods and rest breaks or an additional hour of pay at the regular rate of pay; failure to pay minimum wages; failure to pay and properly calculate overtime wages; failure to furnish accurate itemized wage statements; failure to pay wages for all hours worked; failure to pay all wages due at separation of employment; failure to maintain required records; failure to reimburse for necessary business expenses; violations of California Labor Code sections 201-204, 210, 221-224, 225.5, 226.3, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194 *et seq.*, 1197, 1197.1, 1198, 1199, 2800, 2802, 2698 *et seq.*, and the applicable IWC Wage Order provisions. The Release is limited to PAGA claims only.

Defendants dispute Plaintiffs' allegations and maintain that they have fully complied with all applicable wage and hour laws. The Court has made no determination on the merits of Plaintiffs' claims or Defendants' defenses. Both sides agree that in light of the risks and expenses of further litigation, this Settlement is fair, adequate, and reasonable.

The enclosed settlement check, payable in the gross amount of <<\$ Amount>> represents your portion of the Court-approved PAGA settlement. You will not be retaliated against for cashing your check, and Defendants encourage you to cash this check. Checks that are not cashed within 180 days from the date of issuance will be null and void. Unclaimed funds will be sent to the State Controller's Office, Unclaimed Property Division in the name of the employee who did not cash the check.

Regardless of what you do with the settlement check, you will have released claims for penalties arising under PAGA as asserted in the Lawsuit.

If you have any questions about this notice, please contact the [SETTLEMENT ADMINISTRATOR NAME] at () -

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THE LAWSUIT. PLEASE DO NOT CONTACT THE COURT REGARDING THIS SETTLEMENT.