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23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
24 **FOR THE COUNTY OF KERN**

25 DWAYNE WESLEY, an individual, on behalf
26 of himself and others similarly situated,

27 Plaintiff,

28 vs.

29 PREMIER EQUIPMENT RENTAL, INC., a
30 California corporation; and DOES 1 through
31 100, inclusive,

32 Defendants.

Case No.: BCV-20-101858-BCB

CLASS ACTION

Assigned for All Purposes To:
Hon. Bernard C. Barmann, Jr.
Dept.: 10

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

Complaint Filed: March 23, 2020
Trial Date: None Set

1 This Joint Stipulation of Class Action Settlement (“Settlement” or “Settlement
2 Agreement”) is made and entered into by and between Plaintiff Dwayne Wesley (“Plaintiff” or
3 “Class Representative”), an individual and on behalf of all others similarly situated, and Defendant
4 Premier Equipment Rental, Inc. (“Defendant”) (collectively with Plaintiff, the “Parties”).

5 DEFINITIONS

6 The following definitions are applicable to this Settlement Agreement.

7 Definitions contained elsewhere in this Settlement Agreement will also be effective:

- 8 1. “Action” means *Dwayne Wesley v Premier Equipment Rental, Inc.*, Kern
9 County Superior Court Case No. BCV-20-101858-BCB.
- 10 2. “Attorneys’ Fees and Costs” means attorneys’ fees and costs approved by the
11 Court for Class Counsel’s litigation and resolution of this Action.
- 12 3. “Class Counsel” means Justice Law Corporation, Inc.
- 13 4. “Class List” means a complete list of all Class Members that Defendant will
14 diligently and in good faith compile from its records and provide to the Settlement
15 Administrator within ten (10) business days after Preliminary Approval of this Settlement. The
16 Class List will be formatted in Microsoft Office Excel and will include the following
17 information from Defendant’s records: each Class Member’s full name; last-known mailing
18 address; Social Security number; and dates of employment as a non-exempt employee in
19 California during the Class Period.
- 20 5. “Class Member(s)” or “Settlement Class” means all current and former non-
21 exempt employees of Defendant who worked in California during the Class Period (or if any
22 such person is incompetent, deceased, or unavailable due to military service, the person’s legal
23 representative or successor in interest evidenced by reasonable verification). “Class Members”
24 shall not include any person who submits a timely and valid request for exclusion.
- 25 6. “PAGA Member(s)” or “Settlement PAGA Members” means all current and
26 former individuals who are or who have been employed by Defendant in California during the
27 PAGA Period as a non-exempt employee (or if any such person is incompetent, deceased, or
28

1 unavailable due to military service, the person's legal representative or successor in interest
2 evidenced by reasonable verification)

3 7. "Class Period" means the period from August 10, 2016 to January 1, 2022, or
4 the date of preliminary approval of the settlement, whichever comes first.

5 8. "PAGA Period" means the period from August 10, 2019 to January 1, 2022, or
6 the date of preliminary approval of the settlement, whichever comes first.

7 9. "Class Representative Enhancement Payment" means the amount approved by
8 the Court to be paid to Plaintiff in recognition of his contributions to the Action on behalf of
9 Class Members and Aggrieved Employees.

10 10. "Court" means the Superior Court of California, County of Kern.

11 11. "Defendant" means Premier Equipment Rental, Inc., a California corporation.

12 12. "Effective Date" means: (a) the date of entry of the Court's order granting final
13 approval of the Settlement Agreement and Judgment, if no objections have been filed or if an
14 objection was filed and later withdrawn; or (b) if an objection to the Settlement Agreement is
15 filed, then the date when the time expires to file an appeal of the Court's grant of Final
16 Approval of the Settlement Agreement; or (c) if an objection is filed, as well as a timely Notice
17 of Appeal of the Court's grant of Final Approval of the Settlement Agreement, then the date the
18 appeal is finally resolved, with the final approval unaffected.

19 13. "Individual Settlement Payment" means each Class Member's share of the Net
20 Settlement Amount.

21 14. "Maximum Settlement Amount" is the amount of Three Hundred and Fifty
22 Thousand Dollars and Zero Cents (\$350,000.00), which is the maximum amount to be paid by
23 Defendant pursuant to this Settlement Agreement. Defendant estimates that there are
24 approximately one hundred and six (106) Class Members. If, the number of Class Members
25 increases by more than fifteen percent (15%) of the amount stated then the Net Settlement Fund
26 shall increase by a proportionate amount. The Maximum Settlement Amount includes all
27 Individual Settlement Payments to Class Members, the Class Representative Enhancement
28 Payment to Plaintiff, Attorneys' Fees and Costs to Class Counsel, the Settlement

1 Administration Costs to the Settlement Administrator and the PAGA Payment as specified in
2 this Agreement. Defendant shall pay the employer's share of payroll taxes due on the portion of
3 Settlement Payments allocated to wages separately and in addition to the Maximum Settlement
4 Amount. The Parties agree that Defendant will have no obligation to pay any amount in
5 connection with this Settlement Agreement apart from the Maximum Settlement Amount and
6 the employer's share of payroll taxes due on the portion of Settlement Payments allocated to
7 wages, and that none of the Maximum Settlement Amount will revert to Defendant.

8 15. "Net Settlement Amount" means the Maximum Settlement Amount, less the
9 Class Representative Enhancement Payment, Attorneys' Fees and Costs, and Settlement
10 Administration Costs, and seventy-five percent (75%) of the PAGA Payment as specified in
11 this Agreement.

12 16. "Objection" means any written objection to this Settlement sent by a Class
13 Member to the Settlement Administrator as specified herein and in the Notice of Settlement.
14 An Objection to Settlement must be sent to the Settlement Administrator within the time
15 limitations set forth in this Stipulation.

16 17. "Notice of Class Action Settlement" means the notice of settlement, attached as
17 Exhibit A, to be mailed to all members of the Settlement Class upon Preliminary Approval.

18 18. "PAGA" means the California Labor Code Private Attorneys General Act of
19 2004.

20 19. "PAGA Payment" means the payment made hereunder to the California Labor
21 and Workforce Development Agency and the Settlement Class Members for settlement of
22 claims for civil penalties under PAGA.

23 20. "Parties" means Plaintiff and Defendant collectively.

24 21. "Plaintiff" means Dwayne Wesley.

25 22. "Preliminary Approval" means the Court order granting preliminary approval of
26 the Settlement Agreement.

27 23. "Released Claims" means all causes of action and factual or legal theories that
28 were alleged in the operative complaints or that could have been alleged against Defendant

1 based on the facts contained in the operative complaints, including, but not limited to, all of the
2 following claims for relief: (a) failure to pay all regular wages, minimum wages and overtime
3 wages due; (b) failure to provide proper meal and rest periods, and to properly provide
4 premium pay in lieu thereof; (c) failure to provide complete, accurate or properly formatted
5 wage statements; (d) waiting time penalties; (e) failure to reimburse business expenditures, (f)
6 unfair business practices that could have been premised on the claims, causes of action or legal
7 theories of relief described above or any of the claims, causes of action or legal theories of
8 relief pleaded in the operative complaint; (g) all claims under the California Labor Code Private
9 Attorneys General Act of 2004 that could have been premised on the claims, causes of action or
10 legal theories described above or any of the claims, causes of action or legal theories of relief
11 pleaded in the operative complaint; (h) any other claims or penalties under the California Labor
12 Code or other wage and hour laws which were pleaded or could have been pleaded in the
13 Action; and (i) all damages, penalties, interest and other amounts recoverable under said
14 claims, causes of action or legal theories of relief. The period of the Release shall extend to the
15 limits of the Class Period. The *res judicata* effect of the Judgment will be the same as that of
16 the Release. Defendant shall be entitled to a release of Released Claims which occurred during
17 the Class Period only during such time that the Settlement Class Member was classified as non-
18 exempt, and expressly excluding all other claims for vested benefits, wrongful termination,
19 unemployment insurance, disability, social security, workers' compensation, claims while
20 classified as exempt, and claims outside of the Class Period.

21 24. “Released Parties” means Defendant, and their past, present and/or future,
22 direct and/or indirect, owners, officers, directors, members, managers, employees, agents,
23 representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent
24 companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint
25 venturers, if any.

26 25. “Request for Exclusion” means a timely written request by a Class Member to
27 be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name,
28 address, telephone number and last four digits of the Social Security Number of the Class

1 Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the
2 Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included
3 in the Settlement; and (v) be postmarked on or before the Response Deadline.

4 26. "Response Deadline" means the deadline by which Class Members must
5 postmark the Settlement Administrator Requests for Exclusion or Objection to the Settlement.
6 The Response Deadline will be forty-five (45) calendar days from the initial mailing of the
7 Notice of Class Action Settlement by the Settlement Administrator, unless the 45th day falls on
8 a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next
9 day on which the U.S. Postal Service is open.

10 27. "Settlement Administrator" means ILYM Group, Inc., or any other third-party
11 class action settlement administrator approved by the Parties and the Court for the purposes of
12 administering this Settlement. The Parties each represent that they have no financial interest in
13 the Settlement Administrator or otherwise have a relationship with the Settlement
14 Administrator that could create a conflict of interest.

15 ILYM Group, Inc. has extensive experience in providing notice of class actions and
16 administering class action settlements.

17 28. "Settlement Administration Costs" includes all costs payable to the Settlement
18 Administrator for administering this Settlement, including, but not limited to, printing,
19 distributing, and tracking notice and other documents for this Settlement, tax reporting,
20 distributing all payments to be made pursuant to this Settlement, and providing necessary
21 reports and declarations, as requested by the Parties. After conference and consultation with the
22 Settlement Administrator, \$7,000.00 will be allocated to Settlement Administration as a "not to
23 exceed" cost.

24 29. "Pay Periods" means the number of calendar pay periods that the Class
25 Member worked as a non-exempt employee in California during the Class Period.

26 30. "Workweek Value" means the value of each compensable Workweek, as
27 determined by the formula set forth in herein.

28 ///

TERMS OF AGREEMENT

Plaintiff, on behalf of himself and the Settlement Class, and Defendant agrees as follows:

31. Funding of the Maximum Settlement Amount. No later than within 15 business days after the Effective Date, Defendant will deposit Three Hundred and Fifty Thousand Dollars and Zero Cents (\$350,000.00) into a Qualified Settlement Fund administered by the Settlement Administrator. The Maximum Settlement Amount will be used to pay: (i) Individual Settlement Amounts; (ii) the Class Representative Enhancement Payment; (iii) Attorneys' Fees, Costs, and any other expenses; (iv) the PAGA Payment and (v) Settlement Administration Costs.

32. Attorneys' Fees and Costs. Class Counsel will seek an award of Attorneys' Fees and Costs of not more than One Hundred and Forty Thousand Dollars and Zero Cents (\$140,000.00) in attorney's fees and not more than Fifteen Thousand Dollars and Zero Cents (\$15,000.00) in costs, and Defendant agrees not to oppose such application. All Attorneys' Fees and Costs will be paid from the Maximum Settlement Amount. Plaintiff and Class Counsel will not have the right to revoke this Settlement in the event the Court fails to approve the amount of Attorneys' Fees and Costs sought by Class Counsel. Any portion of the Attorneys' Fees and Costs not awarded to Class Counsel will be added to the Net Settlement Amount.

33. Class Representative Enhancement Payment. Plaintiff will apply to the Court for a Class Representative Enhancement Payment of not more than Seven Thousand and Five Hundred Dollars and Zero Cents (\$7,500.00) for his effort and work in prosecuting the Action on behalf of Class Members and Aggrieved Employees and Defendant agrees not to oppose such application. This amount will be considered non-wage damages and will be reported on an IRS Form 1099. The Class Representative Enhancement Payment, which will be paid from the Maximum Settlement Amount, will be in addition to Plaintiff's right to an Individual Settlement Payment pursuant to the Settlement. Plaintiff will be solely and legally responsible to pay any and all applicable taxes on the payments made pursuant to this paragraph and will hold Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result

1 of the payments. Plaintiff will not have the right to revoke this Settlement in the event the Court
2 fails to approve the amount sought by Plaintiff as a Class Representative Enhancement Payment.
3 Any portion of the Class Representative Enhancement Payment not awarded to the Class
4 Representative will be added to the Net Settlement Amount.

5 34. Settlement Administration Costs. The Settlement Administrator will be paid for
6 the reasonable costs of administration of the Settlement and distribution of payments. These
7 costs, which will be paid from the Maximum Settlement Amount, will include, *inter alia*, the
8 required tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms,
9 preparing and distributing Notices of Class Action Settlement, calculating and distributing all
10 payments to be made pursuant to the Settlement, and providing necessary reports and
11 declarations. Class Counsel obtained a “not to exceed” quote from the Settlement Administrator
12 to complete the administration for \$7,000.00. The Settlement Administrator’s “not to exceed”
13 quote will represent the Settlement Administrator’s agreement that, based on the class size and
14 distributions under the terms of this Settlement, the costs for administration of the terms of this
15 Settlement will not exceed the specified amount. All of the Settlement Administration Costs
16 shall be paid from the Maximum Settlement Amount upon completion of all duties required to
17 be performed by the Settlement Administrator under the terms of this Settlement, or as
18 otherwise required by the Court, subject to the “not to exceed” quote from the Settlement
19 Administrator. The Settlement Administrator will establish the Qualified Settlement Fund
20 Account.

21 35. PAGA Payment. Ten Thousand Dollars and Zero Cents (\$10,000.00) shall be
22 allocated from the Maximum Settlement Fund for settlement of claims for civil penalties under
23 PAGA. The Settlement Administrator shall pay seventy-five percent (75%) of such \$10,00.00
24 PAGA Payment, or \$7,500.00, to the LWDA. Twenty-five (25%) of the \$10,000.00 PAGA
25 Payment, or \$2,500.00, will be included in the Net Settlement Amount and distributed to
26 Settlement Class Members as described in this Agreement. Each Settlement Class Member’s
27 pro rata share of that \$2,500.00 will be part of his or her Individual Settlement Payment.
28

1 36. Individual Class Members Settlement Payment Calculations. The Settlement
2 Administrator will calculate the total number of Workweeks worked by each Class Member as
3 a non-exempt employee in California during the Class Period and the aggregate total number of
4 Workweeks worked by all Class Members as non-exempt employees in California during the
5 Class Period.

6 36(b). To determine each Class Member's estimated "Individual Settlement
7 Payment," the Settlement Administrator will use the following formula: The Net Settlement
8 Amount will be divided by the aggregate total number of Workweeks, resulting in the
9 Workweek Value. Each Class Member's "Individual Settlement Payment" will be calculated by
10 multiplying each individual Class Member's total number of Workweeks by the Workweek
11 Value. If any Class Member received a settlement during the lawsuit, their portion of the
12 Individual Settlement Payment will be reduced by the amount received.

13 36(c). The entire Net Settlement Amount will be disbursed as Individual
14 Settlement Payments to Class Members. If there are any valid and timely Requests for
15 Exclusion from members of the Settlement Class, the Settlement Administrator shall
16 proportionately increase the Individual Settlement Payment for each Class Member according
17 to the number of Workweeks worked, so that the amount actually distributed to the Settlement
18 Class equals 100% of the Net Settlement Amount.

19 37. Individual PAGA Member Settlement Payment Calculations. Individual
20 Settlement Payments will be calculated and apportioned from the PAGA Payment amount
21 based on the number of Pay Periods a PAGA Member worked during the PAGA Period as a
22 non-exempt employee in California. Specific calculations of PAGA Individual Settlement
23 Payments will be made as follows:

24 37(a). The Settlement Administrator will calculate the total number of Pay
25 Periods worked by each PAGA Member as a non-exempt employee in California during the
26 PAGA Period and the aggregate total number of Pay Periods worked by all PAGA Members as
27 non-exempt employees in California during the PAGA Period ("Pay Period Value").
28

1 37(b). To determine each PAGA Members estimated “Individual Settlement
2 Payment,” the Settlement Administrator will use the following formula: The PAGA Payment
3 amount’s portion allocated to the PAGA Period will be divided by the aggregate total number of
4 Pay Periods within the PAGA Period, resulting in the Pay Period Value. Each PAGA Member’s
5 “Individual Settlement Payment” will be calculated by multiplying each individual PAGA
6 Member’s total number of Pay Periods by the Pay Period Value.

7 37(c). The entire PAGA Payment amount will be disbursed as Individual
8 Settlement Payments to PAGA Members. PAGA Members will not be able to opt out or request
9 exclusion from the settlement. For those Class Members who are also PAGA Members, they
10 will not be able to opt out or request exclusion from their Individual Settlement Amount
11 allocation of the PAGA Amount.

12 38. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
13 Class Members and PAGA Members under this Settlement, as well as any other payments made
14 pursuant to this Settlement, will not be utilized to calculate any additional benefits under any
15 benefit plans to which any Class Members and/or PAGA Member may be eligible, including,
16 but not limited to: (i) profit-sharing plans, (ii) bonus plans, (iii) 401(k) plans, (iv) stock
17 purchase plans, (v) vacation plans, (vi) sick leave plans, (vii) PTO plans, and (viii) any other
18 benefit plan. Rather, it is the Parties’ intention that this Settlement Agreement will not affect
19 any rights, contributions, or amounts to which any Class Members and/or PAGA Members may
20 be entitled under any benefit plans.

21 39. Settlement Administration Process. The Parties agree to cooperate in the
22 administration of the settlement and to make all reasonable efforts to control and minimize the
23 costs and expenses incurred in administration of the Settlement.

24 40. Delivery of the Class List. Within ten (10) business days of entry of the Court’s
25 Order Granting Preliminary Approval, Defendant will provide the Class List to the Settlement
26 Administrator.

27 41. Notice by First-Class U.S. Mail. Within ten (10) business days after receiving
28 the Class List from Defendant, the Settlement Administrator will mail a Notice of Class Action

1 Settlement to all Class Members via regular First-Class U.S. Mail, using the most current,
2 known mailing addresses identified in the Class List.

3 42. Confirmation of Contact Information in the Class List and Undeliverable
4 Notices. Prior to mailing, the Settlement Administrator will perform a search based on the
5 National Change of Address Database for information to update and correct for any known or
6 identifiable address changes. Any Notices of Class Action Settlement returned to the Settlement
7 Administrator as non-deliverable on or before the Response Deadline will be sent promptly via
8 regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
9 Administrator will indicate the date of such re-mailing on the Notice of Class Action
10 Settlement. If no forwarding address is provided, the Settlement Administrator will promptly
11 attempt to determine the correct address using an Accurant search/skip-trace, and will then
12 perform a single re-mailing.

13 43. Notices of Class Action Settlement. All Class Members will be mailed a Notice
14 of Class Action Settlement in both English and Spanish in the form attached as Exhibit A¹, or as
15 provided by Court order.

16 44. Disputed Information on Notices of Class Action Settlement. Only Class
17 Members will have an opportunity to dispute the information provided in their Notices of Class
18 Action Settlement. To the extent Class Members dispute their employment dates or the number
19 of Workweeks as set forth on the Notice, Class Members may produce evidence to the
20 Settlement Administrator showing that such information is inaccurate. The Settlement
21 Administrator will advise the Parties of such dispute, allow Defendant five (5) business days to
22 respond with any additional information or records, and then decide the dispute. Defendant's
23 records will be presumed correct, but the Settlement Administrator will evaluate the evidence
24 submitted by the Class Member and Defendant and will make the final decision as to the merits
25 of the dispute.

26
27 ¹ Only the English version of the Class Notice is being attached to the Stipulation of Class Action Settlement. Once
28 the above entitled case receives Preliminary Approval then the Claim Administrator will translate the Class Notice
also into Spanish.

1 45. Requests for Exclusion. Any Class Member wishing to opt-out from the
2 Settlement Agreement must sign and postmark a written Request for Exclusion to the
3 Settlement Administrator within the Response Deadline. The postmark date will be the
4 exclusive means to determine whether a Request for Exclusion has been timely submitted. The
5 Parties and their counsel will not solicit or encourage any Class Member, directly or indirectly,
6 to opt out of the Settlement Agreement. More specifically, a Class Member may request to be
7 excluded from the effect of this Agreement, and any payment of amounts under this Agreement
8 by timely mailing a Request for Exclusion letter to the Settlement Administrator stating that the
9 Class Member wants to be excluded from this Action. This letter must include the Class
10 Member's name, address, telephone number, and signature. To be valid and timely, the request
11 to be excluded must be postmarked by the Response Deadline date that will be specified in the
12 Class Notice (no less than forty-five (45) days from the initial mailing of the Class Notice by
13 the Settlement Administrator). If a notice needs to be re-mailed then that individual Class
14 Member will not be provided additional time to object or request exclusion from the settlement.
15 A Class Member who properly submits a valid and timely request to be excluded from the
16 Action will not receive any payment of any kind in connection with this Agreement or this
17 Action, will not be bound by or receive any benefit of this Agreement, and will have no
18 standing to object to the Settlement. Class Members who do not timely request exclusion will
19 be bound by the releases herein and receive an individual settlement payment ("Participating
20 Class Members"). A request for exclusion must be mailed to the Settlement Administrator at its
21 address to be provided in the Class Notice, and the Settlement Administrator will promptly
22 transmit the requests for exclusion to counsel for the parties.

23 46. Defective Submissions. If a Class Member's Request for Exclusion is defective
24 as to the requirements listed herein, that Class Member will be given an opportunity to cure the
25 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three
26 (3) business days of receiving the defective submission to advise the Class Member that his or
27 her submission is defective and that the defect must be cured to render the Request for
28 Exclusion valid. The Class Member will have until the later of (i) the Response Deadline or (ii)

1 fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark a
2 revised Request for Exclusion. If the revised Request for Exclusion is not postmarked and
3 mailed within that period, it will be deemed untimely.

4 47. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
5 Member who does not affirmatively opt out of the Settlement Agreement by submitting a
6 timely and valid Request for Exclusion will be bound by all of its terms, including those
7 pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if
8 it grants final approval of the Settlement.

9 48. Objection Procedures. The Notice shall state that Settlement Class Members
10 who wish to object to the Settlement may do so by a written statement of objection (“Notice of
11 Objection”) to be mailed by the Response Deadline to the Settlement Administrator or by
12 appearing at the hearing for Final Approval. The Objection must be signed by the Class
13 Member and contain all information required by this Settlement Agreement. The postmark date
14 of the filing and service will be deemed the exclusive means for determining that the Objection
15 is timely. The Notice of Objection must state: (1) the case name and number; (2) the name of
16 the Settlement Class Member; (3) the address of the Settlement Class Member; (4) the last four
17 digits of the Settlement Class Member’s Social Security number; (4) the basis for the objection;
18 and (5) if the Settlement Class Member intends to appear at the Final Approval/Settlement
19 Fairness Hearing. The Settlement Administrator will promptly provide any Notices of
20 Objection to the parties’ counsel upon receiving them. Class Counsel will include all objections
21 received and Plaintiff’s response(s) with Plaintiff’s motion for final approval of the Settlement.
22 Settlement Class Members may also have a right to have their objections heard at the Final
23 Approval/Settlement Fairness Hearing. Class Counsel will not represent any Class Members
24 with respect to any such Objections to this Settlement, and any Class Members who request
25 exclusion from the Settlement will have no standing to object to it.

26 49. Settlement Administrator Reports. The Settlement Administrator will provide
27 Defendant’s counsel and Class Counsel a weekly report of the number of Class Members who
28 have submitted valid Requests for Exclusion, Objections, and disputes regarding Pay Periods

1 calculations. Additionally, the Settlement Administrator will provide to counsel for both Parties
2 any updated reports regarding the administration of the Settlement Agreement as needed or
3 requested.

4 50. Distribution and Timing of Payments. Within 30 calendar days of the Effective
5 Date, and after Defendant has fully funded the Qualified Settlement Fund with the Maximum
6 Settlement Amount, the Settlement Administrator will issue payments to: (i) all Class Members
7 who have not submitted a valid and timely Request for Exclusion, including any Class Member
8 whose notice was returned as undeliverable; (ii) Plaintiff; (iii) Class Counsel; and (iv) the
9 LWDA. The Settlement Administrator will also issue a payment to itself for Court-approved
10 services performed in connection with the Settlement. The Settlement Administrator will pay
11 Individual Settlement Payments from the Net Settlement Amount to all Participating Class
12 Members. The Settlement Administrator will do so by sending a check in the appropriate
13 amount to the Class Member at the address indicated in the list of Class Member names and
14 addresses provided by Defendant, or as subsequently determined by the Settlement
15 Administrator to be correct.

16 51. Un-Cashed Settlement Checks. Class Members will receive checks for their
17 Individual Settlement Payments. Checks will remain negotiable for 120 days (“Check-Cashing
18 Deadline”). Any check not cashed within 120 calendar days will be void. The money from the
19 uncashed checks shall be distributed by the Settlement Administrator, in accordance with
20 California Code of Civil Procedure section 384. Any amounts from the settlement checks that
21 remain uncashed and otherwise unclaimed shall be distributed to a mutually agreeable *cy pres*
22 recipient. This *cy pres* recipient shall either be a Court Appointed Special Advocates (CASA)
23 or an organization supporting victims of cancer.

24 Any costs associated with administering the remaining funds under this section (e.g.,
25 bank stop-payment charges, settlement administration costs associated with any reserve
26 amount) will be deducted before the deposit into the parties designated *cy pres* recipient.

1 52. Certification of Completion. Upon completion of administration of the
2 Settlement, the Settlement Administrator will provide a written declaration under oath to certify
3 such completion to the Court and counsel for all Parties.

4 53. Allocation of Individual Settlement Payments. All Individual Settlement
5 Payments will be allocated as follows: (a) 20% as wages and (b) 80% as penalties and interests.
6 The Settlement Administrator will be responsible for issuing to each claimant a form W-2 for
7 amounts deemed “wages” and an IRS Form 1099 for the portions allocated to penalties.

8 54. Administration of Taxes by the Settlement Administrator. The Settlement
9 Administrator will be responsible for issuing to Plaintiff, Class Members, and Class Counsel
10 tax forms as may be required by law for all amounts paid pursuant to this Settlement. The
11 Settlement Administrator will also be responsible for forwarding all taxes and penalties to the
12 appropriate government authorities as may be required by law.

13 55. Tax Liability. Defendant makes no representation as to the tax treatment or
14 legal effect of the payments called for hereunder, and Plaintiff and Class Members are not
15 relying on any statement, representation, or calculation by Defendant or by the Settlement
16 Administrator in this regard. Plaintiff and Class Members understand and agree that they will
17 be solely responsible for the payment of any taxes and penalties assessed on the payments
18 described herein and will defend, indemnify, and hold Defendant free and harmless from and
19 against any claims resulting from treatment of such payments as non-taxable damages.

20 56. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
21 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
22 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
23 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
24 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
25 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
26 WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
27 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
28 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31

1 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
2 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
3 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
4 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
5 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
6 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
7 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
8 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
9 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
10 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
11 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
12 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
13 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
14 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
15 AGREEMENT.

16 57. No Prior Assignments. The Parties and their counsel represent, covenant, and
17 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
18 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
19 demand, action, cause of action or right herein released and discharged.

20 58. Nullification of Settlement Agreement. In the event that: (i) the Court does not
21 finally approve the Settlement as provided herein; or (ii) the Settlement does not become final
22 for any other reason, then this Settlement Agreement, and any documents generated to bring it
23 into effect, will be null and void. Any order or judgment entered by the Court in furtherance of
24 this Settlement Agreement will likewise be treated as void from the beginning.

25 59. Preliminary Approval Hearing. Plaintiff will obtain a date for hearing before the
26 Court to request the Preliminary Approval of the Settlement Agreement, and the entry of a
27 Preliminary Approval Order for: (i) conditional certification of the Settlement Class for
28 settlement purposes only, (ii) preliminary approval of the proposed Settlement Agreement, (iii)

1 setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval
2 Order will provide for the Notice of Class Action Settlement to be sent to all Class Members as
3 specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit
4 this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
5 proposed Notice of Class Action Settlement.

6 60. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of
7 the deadlines to postmark Requests for Exclusion and/or Objections to the Settlement
8 Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will
9 be conducted to determine the Final Approval of the Settlement Agreement along with the
10 amounts properly payable for (i) Individual Settlement Payments; (ii) the Class Representative
11 Enhancement Payment; (iii) Attorneys' Fees and Costs; and (iv) all Settlement Administration
12 Costs. The Final Approval/Settlement Fairness Hearing will be held no earlier than thirty
13 calendar (30) days after the Response Deadline. Class Counsel will be responsible for drafting
14 all documents necessary to obtain final approval. Class Counsel will also be responsible for
15 drafting the attorneys' fees and costs application to be heard at the final approval hearing.

16 61. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
17 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
18 Judgment to the Court for its approval. After entry of the Judgment, the Court will have
19 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
20 of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-
21 Judgment matters as may be appropriate under court rules or as set forth in this Settlement
22 Agreement.

23 62. General Release by Plaintiff. In consideration for the consideration set forth in
24 this Agreement, Plaintiff, for himself, his heirs, successors and assigns, does waive, release,
25 acquit and forever discharge the Released Parties, from any and all claims, actions, charges,
26 complaints, grievances and causes of action, of whatever nature, whether known or unknown,
27 which exist or may exist on Plaintiff's behalf as of the date of this Agreement, including but not
28 limited to any and all tort claims, contract claims, wage claims, wrongful termination claims,

1 disability claims, benefit claims, public policy claims, retaliation claims, statutory claims,
2 personal injury claims, emotional distress claims, invasion of privacy claims, defamation
3 claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal,
4 state or other governmental statute, law, regulation or ordinance, including any claims arising
5 under the California Fair Employment and Housing Act (FEHA), the California Labor Code,
6 the Wage Orders of California's Industrial Welfare Commission, other state wage and hour
7 laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act
8 (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of
9 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the
10 Family Medical Leave Act, California's Whistleblower Protection Act, California Business &
11 Professions Code Section 17200 et seq., and any and all claims arising under any federal, state
12 or other governmental statute, law, regulation or ordinance. Plaintiff hereby expressly waives
13 and relinquishes any and all claims, rights or benefits that she may have under California Civil
14 Code § 1542, which provides as follows:

15
16 **A GENERAL RELEASE DOES NOT EXTEND TO**
17 **CLAIMS WHICH THE CREDITOR OR**
18 **RELEASING PARTY DOES NOT KNOW OR**
19 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT**
20 **THE TIME OF EXECUTING THE RELEASE**
21 **WHICH IF KNOWN BY HIM OR HER WOULD**
22 **HAVE MATERIALLY AFFECTED HIS OR HER**
23 **SETTLEMENT WITH THE DEBTOR OR**
24 **RELEASED PARTY.**

25 Plaintiff may hereafter discover claims or facts in addition to, or different from, those
26 which she now knows or believes to exist, but he expressly agrees to fully, finally and forever
27 settle and release any and all claims against the Released Parties, known or unknown, suspected
28 or unsuspected, which exist or may exist against Released Parties at the time of execution of
this Agreement, including, but not limited to, any and all claims relating to or arising from
Plaintiff's employment with Defendant. The Parties further acknowledge, understand and
agree that this representation and commitment is essential to the Agreement and that this

1 Agreement would not have been entered into were it not for this representation and
2 commitment.

3 63. Release by All Settlement Class Members. Plaintiff and all Class Members who
4 do not submit a valid and timely Request for Exclusion, on behalf of himself or herself, his or
5 her heirs, descendants, dependents, executors, administrators, assigns, and successors, fully and
6 finally release and discharge the Released Parties from any and all of the Released Claims for
7 the entirety of the Class Period. This waiver and release will be final and binding on the
8 Effective Date, and will have every preclusive effect permitted by law. Plaintiff and the
9 Settlement Class Members may hereafter discover facts or legal arguments in addition to or
10 different from those they now know or currently believe to be true with respect to the Released
11 Claims. Regardless, the discovery of new facts or legal arguments shall in no way limit the
12 scope or definition of the Released Claims, and by virtue of this Agreement, Plaintiff and the
13 Settlement Class Members shall be deemed to have, and by operation of the final judgment
14 approved by the Court, shall have, fully, finally, and forever settled and released all of the
15 Released Claims. The parties understand and specifically agree that the scope of the release
16 described in this Paragraph: is a material part of the consideration for this Agreement; was
17 critical in justifying the agreed upon economic value of this settlement and without it
18 Defendant would not have agreed to the consideration provided; and is narrowly drafted and
19 necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of
20 claims that were or could have been alleged based on the facts, causes of action, and legal
21 theories contained in the operative complaint in the Action.

22 64. Exhibits Incorporated by Reference. The terms of this Settlement Agreement
23 include the terms set forth in any attached Exhibits, which are incorporated by reference as
24 though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of
25 the Settlement.

26 65. Publicity Agreement. Plaintiff and Class Counsel agree not to disclose or
27 publicize the Settlement, including the fact of the Settlement, its terms or contents, and the
28 negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any

1 person or entity, except potential class members and as shall be contractually required to
2 effectuate the terms of the Settlement. For the avoidance of doubt, this section means Plaintiff
3 and Class Counsel agree not to issue press releases, communicate with, or respond to any
4 media or publication entities, publish information in manner or form, whether printed or
5 electronic, on any medium or otherwise communicate, whether by print, video, recording or
6 any other medium, with any person or entity concerning the Settlement, including the fact of
7 the Settlement, its terms or contents and the negotiations underlying the Settlement, except as
8 shall be contractually required to effectuate the terms of the Settlement. However, for the
9 limited purpose of allowing Plaintiff's Counsel to prove adequacy as class counsel in other
10 actions for the limited purpose of showing to the court that the case has settled, Plaintiff's
11 Counsel may disclose the name of the Parties in this action and the venue/case number of this
12 action (but not any other settlement details) for such purposes.

13 66. No Unalleged Claims. Plaintiff and Class Counsel represent that they are not
14 currently aware of any: (a) unalleged claims in addition to, or different from, those which are
15 finally and forever settled and released against the Released Parties by this Settlement; and (b)
16 unalleged facts or legal theories upon which any claims or causes of action could be brought
17 against Defendant, except such facts and theories specifically alleged in the operative
18 complaints in this Action. Plaintiff and Plaintiff's Counsel will further represent that, other than
19 the instant Action, they have no current intention of asserting any other claims against
20 Defendant in any judicial or administrative forum and do not currently know of or represent
21 any persons who have expressed any interest in pursuing litigation or seeking any recovery
22 against Defendant. The Parties acknowledge, understand and agree that the representations
23 described in this paragraph are essential to the Settlement Agreement and that this Settlement
24 Agreement would not have been entered into were it not for this representation.

25 67. Defendant's Option to Revoke Settlement. If, after the Response Deadline, the
26 number of Settlement Class Members who submitted timely and valid written requests for
27 exclusion from the Settlement is at least ten percent (10%) of all 106 Settlement Class
28 Members, Defendant shall have, in its sole discretion, the option to terminate this Settlement.

1 If Defendant exercises the option to terminate this Settlement, Defendant shall: (a) provide
2 written notice to Class Counsel within seven (7) calendar days after the Response Deadline and
3 (b) pay all Settlement Administration Costs incurred up to the date or as a result of the
4 termination, and the Parties shall proceed in all respects as if this Settlement Agreement had not
5 been executed.

6 68. Entire Agreement. This Settlement Agreement and any attached Exhibits
7 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous
8 written or oral agreements may be deemed binding on the Parties.

9 69. Amendment or Modification. This Settlement Agreement may be amended or
10 modified only by a written instrument signed by counsel for all Parties or their successors-in-
11 interest.

12 70. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
13 warrant and represent they are expressly authorized by the Parties whom they represent to
14 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
15 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
16 execute any other documents required to effectuate the terms of this Settlement Agreement. The
17 Parties and their counsel will cooperate with each other and use their best efforts to effect the
18 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
19 content of any document needed to implement the Settlement, or on any supplemental
20 provisions that may become necessary to effectuate the terms of this Settlement, the Parties
21 may seek the assistance of the Court to resolve such disagreement.

22 71. Binding on Successors and Assigns. This Settlement Agreement will be binding
23 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
24 defined.

25 72. California Law Governs. All terms of this Settlement Agreement and Exhibits
26 hereto will be governed by and interpreted according to the laws of the State of California.

27 73. Execution and Counterparts. This Settlement Agreement is subject only to the
28 execution of all Parties. However, the Settlement may be executed in one or more counterparts.

1 All executed counterparts and each of them, including facsimile and scanned copies of the
2 signature page, will be deemed to be one and the same instrument provided that counsel for the
3 Parties will exchange among themselves original signed counterparts.

4 74. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
5 believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Action
6 and have arrived at this Settlement after arm's-length negotiations and in the context of
7 adversarial litigation, taking into account all relevant factors, present and potential. The Parties
8 further acknowledge that they are each represented by competent counsel and that they have
9 had an opportunity to consult with their counsel regarding the fairness and reasonableness of
10 this Settlement. In addition, the Mediator may execute a declaration supporting the Settlement
11 and the reasonableness of the Settlement and the Court may, in its discretion, contact the
12 Mediator to discuss the Settlement and whether or not the Settlement is objectively fair and
13 reasonable

14 75. Invalidity of Any Provision. Before declaring any provision of this Settlement
15 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
16 extent possible consistent with applicable precedents so as to define all provisions of this
17 Settlement Agreement valid and enforceable.

18 76. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate
19 to class certification for purposes of this Settlement only; except, however, that Plaintiff or
20 Class Counsel may appeal any reduction in Attorneys' Fees and Costs below the amount they
21 request from the Court, and either party may appeal any court order that materially alters the
22 Settlement Agreement's terms.

23 77. Non-Admission of Liability. The Parties enter into this Settlement to resolve the
24 dispute that has arisen between them and to avoid the burden, expense and risk of continued
25 litigation. In entering into this Settlement, Defendant does not admit, and specifically denies,
26 that it violated any federal, state, or local law; violated any regulations or guidelines
27 promulgated pursuant to any statute or any other applicable laws, regulations or legal
28 requirements; breached any contract; violated or breached any duty; engaged in any

1 misrepresentation or deception; or engaged in any other unlawful conduct with respect to its
2 employees. Neither this Settlement, nor any of its terms or provisions, nor any of the
3 negotiations connected with it, will be construed as an admission or concession by Defendant
4 of any such violations or failures to comply with any applicable law. Except as necessary in a
5 proceeding to enforce the terms of this Settlement, this Settlement and its terms and provisions
6 will not be offered or received as evidence in any action or proceeding to establish any liability
7 or admission on the part of Defendant or to establish the existence of any condition constituting
8 a violation of, or a non-compliance with, federal, state, local or other applicable law.

9 78. Waiver. No waiver of any condition or covenant contained in this Settlement or
10 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
11 constitute a further waiver by such party of the same or any other condition, covenant, right or
12 remedy.

13 79. Enforcement Action. In the event that one or more of the Parties institutes any
14 legal action or other proceeding against any other Party or Parties to enforce the provisions of
15 this Settlement or to declare rights and/or obligations under this Settlement, the successful
16 Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable
17 attorneys' fees and costs, including expert witness fees incurred in connection with any
18 enforcement actions.

19 80. Mutual Preparation. The Parties have had a full opportunity to negotiate the
20 terms and conditions of this Settlement. Accordingly, this Settlement Agreement will not be
21 construed more strictly against one party than another merely by virtue of the fact that it may
22 have been prepared by counsel for one of the Parties. It being recognized that, because of the
23 arms-length negotiations between the Parties, all Parties have contributed to the preparation of
24 this Settlement Agreement.

25 81. Representation By Counsel. The Parties acknowledge that they have been
26 represented by counsel throughout all negotiations that preceded the execution of this
27 Settlement Agreement, and that this Settlement Agreement has been executed with the consent
28

1 and advice of counsel. Further, Plaintiff and Class Counsel warrant and represent that there are
2 no liens on the Settlement Agreement.

3 82. All Terms Subject to Final Court Approval. All amounts and procedures
4 described in this Settlement Agreement herein will be subject to final Court approval.

5 83. Cooperation and Execution of Necessary Documents. All Parties will cooperate
6 in good faith and execute all documents to the extent reasonably necessary to effectuate the
7 terms of this Settlement Agreement.

8 84. Binding Agreement. The Parties warrant that they understand and have full
9 authority to enter into this Settlement, and further intend that this Settlement will be fully
10 enforceable and binding on all parties, and agree that it will be admissible and subject to
11 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
12 provisions that otherwise might apply under federal or state law.

13 **SO AGREED AND STIPULATED**

14
15 **PLAINTIFF**

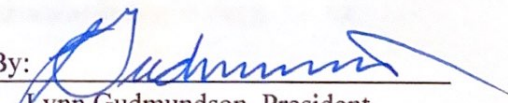
16
17 Dated: 12/30/2021



Dwayne Wesley

18
19
20 **DEFENDANT**
21 Premier Equipment Rental, Inc.

22 Dated: 1-13-2022

23
24 By: 

Lynn Gudmundson, President

25
26 **[SIGNATURES CONTINUED ON NEXT PAGE]**

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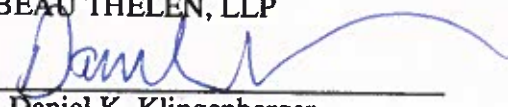
28

JUSTICE LAW CORPORATION

DATED: 12/30/21

By 
Douglas Han
Shunt Tatavos-Gharajeh
Jason Rothman
Attorneys for Plaintiff, Dwayne Wesley
and all others similarly situated

DATED: 1/26/22

LEBEAU THELEN, LLP
By 
Daniel K. Klingenger
Mathew M. Brady
Attorneys for Defendant, Premier
Equipment Rental, Inc.

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On February 23, 2022, I served the foregoing document described as

JOINT STIPULATION OF CLASS ACTION SETTLEMENT

for the following case: **Wesley v. Premier Equipment Rental, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-854255-21**
Court Case No.: BCV-20-101858
Kern County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 23, 2022, at Pasadena, California.



Mariah Anderson