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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SANTA CRUZ**

14 XAVIER HUNTER as an individual on
15 behalf of himself and on behalf of all others
16 similarly situated,

17 Plaintiff,

18 vs.
19

20 72 HOUR, LLC, a California limited
21 liability company; BOB WONDRIES
22 MOTORS, a California corporation; and
DOES 1 to 100, inclusive,

23 Defendant.
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Case No.: 22CV00661

STIPULATION OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT
AND RELEASE

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AND RELEASE

This Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiff (“Plaintiff” or “Class Representative”), individually and on behalf of all others similarly situated and aggrieved, and Defendant 72 Hour, LLC (collectively “Defendant” or “72 Hour”) (collectively with Plaintiff, the “Parties”).

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means the civil lawsuit filed by Plaintiff Xavier Hunter against Defendant, styled Xavier Hunter v. 72 Hour , LLC, et al., Santa Cruz County Superior Court Case No. 22CV00661, as amended by the operative First Amended Complaint pursuant to this Settlement Agreement.

2. “Administrator Payment” means the payment to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, creating and maintaining a web site and toll-free telephone number, tax reporting, distributing the Total Maximum Settlement Amount, and providing necessary reports and declarations, as requested by the Parties or the Court. The Administrator Payment will not exceed Seven Thousand Dollars and Zero Cents (\$7,000.00) and it shall be paid from the Total Maximum Settlement Amount as defined below.

3. “Appeal” means a timely appeal by a Class Member to the Order and Judgment approving the Settlement, or an appeal by one of the Parties to an order that materially alters the Settlement.

4. “Attorney’s Fees and Costs” means attorney’s fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action, and all costs incurred and to be incurred by Class Counsel in the Action, including but not limited to, costs associated with documenting the Settlement, providing any notices required as part of the

1 Settlement or Court order, securing the Court's approval of the Settlement, administering the
2 Settlement, obtaining entry of an Order and Judgment approving the Settlement, and expenses for
3 any experts. Class Counsel will request not more than one-third of the Total Maximum Settlement
4 Amount, or One Hundred Twenty Nine Thousand Three Hundred Thirty Three Dollars and Thirty
5 Three Cents (\$129,333.33) in attorney's fees, and not more than Ten Thousand Dollars and Zero
6 Cents (\$10,000.00) in litigation costs and expenses. Defendant has agreed not to oppose Class
7 Counsel's request for attorney's fees and costs and expenses as set forth above.

8 5. "Class Counsel" means Zachary M. Crosner, Michael Crosner, and Jamie Serb and
9 Crosner Legal, P.C.

10 6. "Class List" means a complete list of all Class Members that Defendant will
11 diligently and in good faith compile from their records and provide to the Settlement
12 Administrator within ten (10) business days after entry of an Order granting Preliminary Approval
13 of this Settlement. The Class List will be formatted in Microsoft Office Excel and will include
14 each Class Member's full name; most recent mailing address and telephone number; Social
15 Security Number; and dates of employment.

16 7. "Class Member(s)" or "Settlement Class" means all individuals employed by
17 Defendant in California as an hourly-paid, non-exempt employee during the Class Period.

18 8. "Class Notice" means the Notice of Class Action Settlement substantially in the
19 form attached hereto as Exhibit A, and subject to approval by the Court.

20 9. "Class Period" means the period from March 30, 2018, through the date of
21 preliminary approval, or September 19, 2022, whichever is sooner.

22 10. "Class Representative" means Plaintiff Xavier Hunter.

23 11. "Court" means the Santa Cruz County Superior Court.

24 12. "Effective Date" shall be when Final Approval of the Settlement can no longer be
25 appealed by an objector, or in the absence of any objections (or if all objections are withdrawn
26 with Court approval by the time of the Final Approval Hearing) or any plaintiff in intervention,
27 upon Notice of Entry of Judgment. If objections are heard by the Court and overruled, and no
28 appeal is taken of the Judgment by an objector or plaintiff in intervention, then the Effective Date

1 shall be sixty-five (65) calendar days after Notice of Entry of Judgment. If any appeal is taken
2 from the Court's overruling of any objections to the Settlement, then the Effective Date shall be
3 ten (10) calendar days after all appeals are withdrawn or after an appellate decision affirming the
4 Final Approval and Judgment becomes final.

5 13. "Final Approval" means the Court's Order granting final approval of the
6 Settlement.

7 14. "Individual Settlement Payment" means each Participating Class Member's
8 respective share of the Net Settlement Sum.

9 15. "Net Settlement Sum" means the portion of the Total Maximum Settlement
10 Amount remaining after deducting the Named Plaintiff Award, the PAGA Payment, Attorney's
11 Fees and Costs, and the Administrator Payment. The entire Net Settlement Sum will be
12 distributed to the Participating Class Members. There will be no reversion of any portion of the
13 Net Settlement Sum to Defendant.

14 16. "Notice of Entry of Judgment" means a Notice of Entry of Judgment pursuant to
15 section 664.5(c) of the California Code of Civil Procedure filed and served by Plaintiff.

16 17. "Objection" means a Class Member's valid and timely written objection to the
17 Settlement Agreement. Objections should include: (i) the objector's full name, signature, address,
18 and telephone number; (ii) a written statement of all grounds for the objection accompanied by
19 any legal support for such objection; and (iii) copies of papers, briefs, or other documents upon
20 which the objection is based, if any. Alternatively, any Class Member may object by appearing at
21 the Final Approval Hearing either with or without submitting a written Objection.

22 18. "PAGA Group" means all individuals employed by Defendant in California as an
23 hourly-paid, non-exempt employee during the PAGA Period.

24 19. "PAGA Payment" means the Twenty Thousand Dollars and No Cents (\$20,000.00)
25 from the Total Maximum Settlement Amount allocated to civil penalties under the Private
26 Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* ("PAGA"). Seventy
27 Five percent (75%) of the PAGA Payment will be paid to the California Labor & Workforce
28 Development Agency for its portion of the civil penalties (the "PAGA Payment to the LWDA"),

1 and twenty five percent (25%) of the PAGA Payment will be included in the Net Settlement Sum
2 and paid to the PAGA Group (the “PAGA Payment to the PAGA Group Members”).

3 20. “PAGA Period” means the period from March 22, 2021, through the date of
4 preliminary approval, or September 19, 2022, whichever is sooner.

5 21. “Parties” means Plaintiff and Defendant collectively.

6 22. “Participating Class Member” means any Class Member who does not submit a
7 timely and valid Request for Exclusion.

8 23. “Plaintiff” means Xavier Hunter.

9 24. “Plaintiff’s Counsel” means Zachary M. Crosner, Michael Crosner, and Blake R.
10 Jones, and Crosner Legal, P.C.

11 25. “Preliminary Approval” means the Court order granting preliminary approval of
12 the Settlement.

13 26. “Qualifying Workweek(s)” means each seven-day period commencing on Sunday
14 at 12:00 a.m. and ending on Saturday at 11:59 p.m. in which a Class Member was employed by
15 Defendant in California during the Class Period. One day of work within any seven-day period
16 will be counted as a Qualifying Workweek for the purposes of this Agreement.

17 27. “Released Claims” means any and all claims arising during the Class Period for: (i)
18 failure to pay all wages due (including minimum, straight time and overtime wages); (ii) failure to
19 provide legally-compliant meal breaks; (iii) failure to provide legally-compliant rest breaks; (iv)
20 failure to pay all wages due at the time of termination; (v) failure to provide accurate itemized
21 wage statements; (vi) failure to reimburse for business expenses; (vii) violation of the Unfair
22 Competition Law (Bus. & Prof. Code § 17200, *et seq.*); and (viii) for penalties under the Private
23 Attorneys General Act as alleged in the operative First Amended Complaint, or that could have
24 been alleged based on the factual allegations of the First Amended Complaint and the PAGA
25 Notice. The PAGA claims and allegations released include that Defendant failed to pay all wages
26 due (including minimum, straight and overtime wages), failed to provide legally-compliant meal
27 breaks, failed to pay meal premium pay, failed to provide legally-compliant rest breaks, failed to
28 pay rest premium pay, failed to provide timely and/or accurate final paychecks, failed to provide

1 accurate itemized wage statements, failed to reimburse for business expenses, committed
2 recordkeeping violations, failed to provide suitable resting facilities, failed to provide suitable
3 seating, refused to make payment, engaged in statutory wage violations, failed to provide standard
4 conditions under the wage orders, engaged in unlawful agreements and unlawful criminal history
5 inquiries, failed to comply with the California paid sick leave laws, failed to pay reporting time
6 pay and failed to pay split shift premiums. The Released Claims do not include any claims that
7 cannot be released as a matter of law.

8 28. “Released Parties” means 72 Hour, LLC doing business as Watsonville Ford,
9 Chevrolet of Watsonville, National Truck Sales and Service, Watsonville Buying Center,
10 Monterey Bay Chrysler Dodge Jeep Ram, National Auto Fleet Group, and Mid Bay Ford Lincoln,
11 including its past or present successors and predecessors in interest, affiliated corporations,
12 entities, divisions, general and limited partners, joint venturers, acquirers, subsidiaries, affiliates,
13 parents, and each of their respective current and former officers, directors, managers, members,
14 shareholders, employees, agents, principals, representatives, attorneys, advisors, accountants,
15 auditors, consultants, insurers, and reinsurers.

16 29. “Request for Exclusion” means a timely letter submitted by a Class Member
17 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i) set
18 forth the name, address, telephone number and last four digits of the Social Security Number of
19 the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to
20 the Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included
21 in the Settlement; and (v) be postmarked on or before the Response Deadline.

22 30. “Response Deadline” means the deadline by which Class Members must postmark
23 to the Settlement Administrator Requests for Exclusion, or postmark Objections to the Settlement
24 Administrator. The Response Deadline will be forty-five (45) calendar days from the initial
25 mailing of the Class Notice by the Settlement Administrator, unless the 45th day falls on a Sunday
26 or Federal holiday, in which case the Response Deadline will be extended to the next day on
27 which the U.S. Postal Service is open.

28 31. “Settlement Administrator” means Phoenix Class Action Administration Solutions,
4853-3198-8531.1

1 or any other third-party class action settlement administrator agreed to by the Parties and approved
2 by the Court for the purposes of administering this Settlement. The Parties each represent that
3 they do not have any financial interest in the Settlement Administrator or otherwise have a
4 relationship with the Settlement Administrator that could create a conflict of interest.

5 32. "Settlement Group" means the Settlement Class and PAGA Group collectively.

6 34. "Total Maximum Settlement Amount" means the amount of Three Hundred Eighty
7 Eight Thousand Dollars and Zero Cents (\$388,000.00), to be paid by Defendant in full satisfaction
8 of all claims alleged in the Action or that could have been alleged in the Action, based on the
9 operative facts alleged therein, which includes all Individual Settlement Payments to Participating
10 Class Members, the PAGA Payment, Attorney's Fees and Costs, the Named Plaintiff Award, and
11 Administrator Payment. Any employer-side payroll taxes required by law, including the
12 employer-side FICA, FUTA, and SDI contributions, will be paid by Defendant separately and
13 apart from the Total Maximum Settlement Amount. There will be no reversion of any portion of
14 the Total Maximum Settlement Amount to Defendant.

15 **TERMS OF AGREEMENT**

16 The Plaintiff, on behalf of themselves and the Settlement Group, and Defendant agree as
17 follows:

18 35. Amended Complaint. The Parties will stipulate to the filing of a First Amended
19 Complaint in the Action for purposes of settlement only, which shall incorporate all claims alleged
20 in the related PAGA-only action, Xavier Hunter v. 72 Hour, LLC, et al., Santa Cruz County
21 Superior Court Case No. 22CV01215, including all applicable statutes of limitations. Plaintiff
22 thereafter will dismiss the related PAGA-only action without prejudice upon the filing of the First
23 Amended Complaint in this Action.

24 36. Class Certification. For settlement purposes only, the Parties agree that the Class
25 shall be certified. This Settlement Agreement is contingent upon the approval and certification by
26 the Court of the Class for settlement purposes only. Defendant does not waive, and instead
27 expressly reserves, all rights to challenge the propriety of class certification for any purpose
28 should the Court not approve the Settlement. In connection with the proposed certification of the

1 Class, the Parties shall cooperate and present to the Court for its consideration competent
2 evidence, as may be requested by the Court, under the applicable due process requirements and
3 standards for class certification. In the event either preliminary or final approval of the Settlement
4 is not obtained or, if obtained, is reversed upon appeal, the Parties shall be returned to their
5 respective positions in the action as they existed immediately prior to the execution of this
6 Agreement. Furthermore, nothing said or represented in connection with obtaining approval of the
7 Court with respect to this settlement, either on a preliminary or final basis, shall be admissible for
8 any purpose other than to obtain approval by the Court of this Settlement.

9 37 Funding of the Total Maximum Settlement Amount. Defendant will deposit the
10 Total Maximum Settlement Amount via wire transfer into a Qualified Settlement Account
11 (“QSA”) to be established by the Settlement Administrator within twenty (20) calendar days of the
12 Effective Date. The Total Maximum Settlement Amount was agreed upon based on Defendant’s
13 representations that there were 16,386 workweeks for the Settlement Class Members during the
14 Class Period. If the number of workweeks worked by the Settlement Class Members exceeds that
15 number more than 10%, the Total Maximum Settlement Amount, Defendant shall in its sole
16 discretion, have the option to either: (1) de-escalate the Settlement so that the Class Period ends on
17 the date that the work week count totals 18,024; or (2) permit the Total Maximum Settlement
18 Amount to be increased proportionally by the work weeks worked in excess of 18,024 work weeks
19 multiplied by the per work week value.

20 38. Attorney’s Fees and Costs. Defendant agrees not to oppose or impede any
21 application or motion by Class Counsel for Attorney’s Fees and Costs, not to exceed one-third
22 (1/3) of the Total Maximum Settlement Amount, or One Hundred Twenty Nine Thousand Three
23 Hundred Thirty Three Dollars and Thirty Three Cents (\$129,333.33) in attorney’s fees, and actual
24 litigation costs and expenses not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00).
25 Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Fee and
26 Cost Awards. The Settlement Administrator will pay the Court-approved amounts for the Attorney
27 Fee Award and Cost Award out of the Total Maximum Settlement Amount. Any funds allocated
28 to Attorney’s Fees and Costs but not awarded by the Court will be included in the Net Settlement

1 Sum and distributed pro rata to the Participating Class Members. The Settlement Administrator
2 will issue an IRS Form 1099 to Class Counsel for the Attorney's Fees and Costs. In the event that
3 the Court reduces or does not approve the requested Attorney Fee Award, Plaintiff shall not have
4 the right to revoke the Settlement, and it will remain binding, nor will Plaintiffs or Class Counsel
5 seek, request, or demand an increase in the Total Maximum Settlement Amount on that basis.

6 39. Named Plaintiff Award. In exchange for a general release, and in recognition of his
7 effort and work in prosecuting the Action on behalf of the Settlement Group, Defendant agrees not
8 to oppose or impede any application or motion for a Named Plaintiff Award not to exceed Ten
9 Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff. The Named Plaintiff Award will be
10 paid from the Total Maximum Settlement Amount and will be in addition to each Plaintiff's
11 Individual Settlement Payment. Any funds allocated to the Named Plaintiff Award but not
12 awarded by the Court will be included in the Net Settlement Sum and distributed pro rata to the
13 Participating Class Members. Plaintiff will be solely responsible to pay any and all applicable
14 taxes on the payment made pursuant to this paragraph, and the Settlement Administrator will issue
15 an IRS Form 1099 to Plaintiff for the Named Plaintiff Award. Plaintiff shall hold harmless
16 Defendant, Class Counsel and the Released Parties from any claim or liability for taxes, penalties,
17 or interest arising as a result of the Individual Settlement Payment. In the event that the Court
18 reduces or does not approve the requested Individual Settlement Payment, Plaintiff shall not have
19 the right to revoke the Settlement, and it will remain binding, nor will Plaintiff seek, request, or
20 demand an increase in the Total Maximum Settlement Amount on that basis.

21 40. Administrator Payment. The Settlement Administrator will be paid for the
22 reasonable costs of administration of the Settlement and distribution of payments from the Total
23 Maximum Settlement Amount, which Administrator Payment shall not exceed Seven Thousand
24 Dollars and Zero Cents (\$7,000.00). These costs, will include, *inter alia*, the required tax
25 reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms,
26 distributing Class Notices, creating and maintaining a web site and toll-free telephone number,
27 calculating Individual Settlement Payments and distributing the Total Maximum Settlement
28 Amount as set forth herein, and providing necessary reports and declarations. These costs shall be

1 paid from the Total Maximum Settlement Amount. Any funds allocated to the Administrator
2 Payment but not incurred by or otherwise paid to the Settlement Administrator will be included in
3 the Net Settlement Sum and distributed pro rata to the Participating Class Members.

4 41. PAGA Payment. The Parties agree to allocate Twenty Thousand Dollars and Zero
5 Cents (\$20,000.00) from the Total Maximum Settlement Amount to the resolution of all claims
6 related to the Settlement Group arising under PAGA. Pursuant to PAGA, Seventy-Five Percent
7 (75%) of the PAGA Payment, or Fifteen Thousand Dollars and No Cents (\$15,000.00), will be
8 paid to the California Labor & Workforce Development Agency as the PAGA Payment to the
9 LWDA, and the remaining Twenty Five Percent (25%) of the PAGA Payment, or Five Thousand
10 Dollars and No Cents (\$5,000.00), will be allocated to the Net Settlement Sum for distribution to
11 the PAGA Group as the PAGA Payment to the PAGA Group Members.

12 42. Individual Settlement Payment Calculations. The Individual Settlement Payment
13 for each Participating Class Member shall be determined as follows: the Net Settlement Sum shall
14 be divided by the total number of Qualifying Workweeks of all Class Members. The result of this
15 division is referred to as the "Weekly Rate;" and (b) the amount of each Class Member's
16 Individual Settlement Payment shall be the result of multiplying each Class Member's number of
17 Qualifying Workweeks by the Weekly Rate. Each PAGA Group Member's PAGA Payment shall
18 be determined as follows: the PAGA Payment to the PAGA Group Members shall be divided by
19 the total number of Qualifying Workweeks of all PAGA Group Members. The result of this
20 division is referred to as the "PAGA Weekly Rate"; and (b) the amount of each Class Member's
21 Individual PAGA Payment shall be the result of multiplying each Class Member's number of
22 Qualifying Workweeks by the PAGA Weekly Rate. The Settlement Administrator will perform all
23 calculations necessary to determine the Individual Settlement Payments based upon information
24 provided by Defendant with the Class List.

25 43. The Settlement Administrator shall be responsible for reducing each Individual
26 Settlement Payment based on any required deductions for each Participating Class Member and/or
27 PAGA Group Member as specifically set forth herein, including employee-side tax withholdings
28 or deductions.

1 44. The entire Net Settlement Sum will be disbursed to all Class Members who do not
2 submit timely and valid Requests for Exclusion. If there are any timely and valid Requests for
3 Exclusion from members of the Class, the Settlement Administrator shall not include all
4 Qualifying Workweeks attributable to such individuals as part of the calculation of the total class-
5 wide Qualifying Workweeks for all Participating Class Members under paragraph 42 above, so
6 that the amount available for distribution to the Participating Class Members equals 100% of the
7 Net Settlement Sum.

8 45. No Credit To Benefit Plans. The Individual Settlement Payments made to
9 Participating Class Members under this Settlement, as well as any other payments made pursuant
10 to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans
11 to which any Class Members may be eligible, including, but not limited to: profit-sharing plans,
12 bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and
13 any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not
14 affect any rights, contributions, or amounts to which any Class Members may be entitled under
15 any benefit plans.

16 46. Administration Process. The Parties agree to cooperate in the administration of the
17 settlement and to make all reasonable efforts to control and minimize the costs and expenses
18 incurred in administration of the Settlement.

19 47. Delivery of the Class List. Within ten (10) days of Preliminary Approval,
20 Defendant will provide the Class List to the Settlement Administrator.

21 48. Notice by First-Class U.S. Mail. Within seven (7) days after receiving the Class
22 List from Defendant, the Settlement Administrator will mail a Class Notice to all Class Members
23 via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in
24 the Class List.

25 49. Confirmation of Contact Information in the Class List. Prior to mailing, the
26 Settlement Administrator will perform a search based on the National Change of Address
27 Database for information to update and correct for any known or identifiable address changes.
28 Any Class Notices returned to the Settlement Administrator as non-deliverable on or before the

1 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
2 address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing
3 on the Class Notice. If no forwarding address is provided, the Settlement Administrator will
4 promptly attempt to determine the correct address using a skip-trace or other search using the
5 name, address and/or Social Security Number of the Class Member involved, and will then
6 perform a single re-mailing.

7 50. Class Notices. All Class Members will be mailed a Class Notice via First Class
8 U.S. Mail. Each Class Notice will provide: (i) information regarding the nature of the Actions; (ii)
9 a summary of the Settlement's principal terms; (iii) the Settlement Class definition; (iv) the total
10 number of Qualifying Work Weeks worked by each respective Class Member during the Class
11 Period; (v) each Class Member's estimated Individual Settlement Payment and the formula for
12 calculating Individual Settlement Payments; (vi) the procedure for a Class Member to dispute the
13 calculation of their estimated Individual Settlement Payments; (vii) the dates that comprise the
14 Class Period; (viii) instructions on how to submit a Request for Exclusion or Objection; (ix) the
15 deadlines by which the Class Member must postmark Requests for Exclusion, and the deadlines
16 by which the Class Members must postmark Objections to the Settlement; and (x) the claims to be
17 released. The Class Notice shall be in substantially the same form as Exhibit A hereto, subject to
18 approval by the Court.

19 51. The Settlement Administrator will also set up and maintain a toll-free telephone
20 number for Settlement Group Members to contact the Settlement Administrator regarding the
21 Settlement, and the toll-free telephone number will be identified in the Class Notice.

22 52. Disputed Information on Class Notices. Class Members will have an opportunity
23 to dispute the information provided in their Class Notices. To the extent Class Members dispute
24 their total Qualifying Work Weeks while working for Defendant as an hourly-paid, non-exempt
25 employee during the Class Period, Class Members may produce evidence to the Settlement
26 Administrator showing that such information in the Class Notice is inaccurate. The Settlement
27 Administrator will decide the dispute. Defendant's records will be presumed correct, but the
28 Settlement Administrator will evaluate the evidence submitted by the Class Member and will

1 make the final decision as to the merits of the dispute, which decision shall be final and
2 unappealable by any Party or Class Member. All disputes will be resolved within ten (10)
3 business days of the Response Deadline.

4 53. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
5 Settlement Agreement must sign and postmark a written Request for Exclusion to the Settlement
6 Administrator within the Response Deadline. The postmark date will be the exclusive means to
7 determine whether a Request for Exclusion has been timely submitted. There is no right for PAGA
8 Group Members to opt out of receiving their respective payments from the PAGA Payment to the
9 PAGA Group Members, and any eligible Settlement Class Member who submits a timely and
10 valid Request for Exclusion will receive their payment from the PAGA Payment to the PAGA
11 Group Members and will be bound the release of all claims under PAGA.

12 54. Defective Submissions. If a Class Member's Request for Exclusion is defective as
13 to the requirements listed herein, that Class Member will be given an opportunity to cure the
14 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3)
15 business days of receiving the defective submission to advise the Class Member that his or her
16 submission is defective and that the defect must be cured to render the Request for Exclusion
17 valid. The Class Member will have until the later of (i) the Response Deadline or (ii) fifteen (15)
18 calendar days from the date of the cure letter to postmark a revised Request for Exclusion. If the
19 revised Request for Exclusion is not postmarked within that period, it will be deemed untimely.

20 55. Option to Rescind the Settlement Agreement: Defendant may elect, at their option,
21 to rescind the Settlement if more than five percent (5%) of Class Members submit timely and valid
22 Requests for Exclusion. If Defendant exercises the conditional right to rescind, it must do so by
23 written communication to Class Counsel that is received by Class Counsel within thirty (30)
24 calendar days of the Response Deadline. If Defendant rescinds this Settlement pursuant to this
25 paragraph, the Settlement and conditional class certification shall be considered void and shall be
26 of no force and effect, and Defendant will be responsible for all fees and costs incurred by the
27 Settlement Administration to the date of rescission.

28 56. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class

1 Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely
2 and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the
3 Released Claims, as well as any Judgment that may be entered by the Court if it grants final
4 approval to the Settlement.

5 57. Objection Procedures. To object to the Settlement Agreement, a Class Member
6 may timely submit to the Settlement Administrator a written Objection. Any written Objection
7 should be signed by the Class Member and contain all information required by this Settlement
8 Agreement, as specified in the Class Notice. Written Objections may be mailed to the Settlement
9 Administrator as explained in the Class Notice. The Settlement Administrator will forward copies
10 of all written Objections to both Class Counsel and counsel for the Defendant within three (3)
11 calendar days of receipt. The postmark date will be deemed the exclusive means for determining
12 whether a written Objection is timely. Alternatively, any Class Member may appear at the Final
13 Approval Hearing, personally or through their own counsel, in order to have their objections heard
14 by the Court, regardless of whether such Class Member submits a written Objection. Only those
15 Class Members who do not submit a Request for Exclusion may object to the Settlement. At no
16 time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
17 to submit written or oral objections to the Settlement Agreement or appeal from the Order and
18 Judgment. Class Counsel will not represent any Class Members with respect to any such
19 objections to this Settlement.

20 58. Certification Reports. The Settlement Administrator will provide all counsel with a
21 weekly report that certifies the number of Class Members who have submitted valid Requests for
22 Exclusion, and whether any Class Member has submitted a challenge to any information contained
23 in their Class Notice. Additionally, the Settlement Administrator will provide to counsel for both
24 Parties any updated reports regarding the administration of the Settlement Agreement as needed or
25 requested.

26 59. Distribution of Settlement Payments. Within ten (10) calendar days of receipt the
27 Total Maximum Settlement Amount, the Settlement Administrator will issue all Court-approved
28 payments to: (i) the Participating Class Members and PAGA Group Members; (ii) the Labor &

1 Workforce Development Agency; (iii) Plaintiff; (iv) Class Counsel, and (v) itself.

2 60. Un-cashed Settlement Checks. If a Participating Class Member's and/or PAGA
3 Group Member's Individual Settlement Payment check is not cashed within 150 days after its last
4 mailing, the Settlement Administrator will send such individuals a letter informing him or her that
5 unless the check is cashed in the next 30 days, it will expire and become non-negotiable, and offer
6 to replace the check if it was lost or misplaced but not cashed. All funds represented by uncashed
7 checks and funds represented by Individual Settlement Payments and/or PAGA Payments returned
8 as undeliverable will be forwarded to the California State Controller's Unclaimed Property Fund.

9 61. Certification of Completion. Upon completion of administration of the Settlement,
10 the Settlement Administrator will provide a written declaration under oath to certify such
11 completion to the Court and counsel for all Parties.

12 62. Treatment of Individual Settlement Payments and PAGA Payments. All Individual
13 Settlement Payments will be allocated as follows: (i) Twenty Percent (20%) of each Individual
14 Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued; and (ii)
15 Eighty Percent (80%) will be allocated to expenses, penalties and interest for which IRS Forms
16 1099-MISC will be issued. All PAGA Payments will be treated as penalties for which IRS Forms
17 1099-MISC will be issued.

18 63. Administration of Taxes by the Settlement Administrator. The Settlement
19 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class
20 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid
21 pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding
22 all payroll taxes and penalties to the appropriate government authorities.

23 64. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
24 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
25 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
26 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
27 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
28 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS

1 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
2 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
3 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
4 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
5 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
6 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
7 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
8 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
9 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
10 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
11 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
12 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
13 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
14 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
15 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
16 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
17 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
18 AGREEMENT.

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

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

28 67. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to

1 request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval Order
2 for (a) conditional certification of the Settlement Class for settlement purposes only, (b)
3 Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for the Final
4 Approval. The Preliminary Approval Order will provide for the Class Notice to be sent to all
5 Class Members as specified herein. In conjunction with the Preliminary Approval hearing,
6 Plaintiff will submit this Settlement Agreement, which sets forth the terms of this Settlement, and
7 will include the proposed Class Notice, which is attached hereto as Exhibit A. Plaintiff shall also
8 provide notice of the settlement and Preliminary Approval Hearing to the Labor & Workforce
9 Development Agency as required by PAGA at the same time as filing the Motion for Preliminary
10 Approval.

11 68. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
12 deadline to postmark Requests for Exclusion and Objections, and with the Court's permission, a
13 Final Approval Hearing will be conducted to determine the Final Approval of the Settlement,
14 along with the amounts properly payable for: (i) Individual Settlement Payments; (ii) the Labor &
15 Workforce Development Agency Payment; (iii) the Named Plaintiff Award; (iv) Attorney's Fees
16 and Costs; and (v) the Administrator Payment. The Final Approval Hearing will not be held
17 earlier than thirty (30) calendar days after the Response Deadline. Class Counsel will be
18 responsible for drafting all documents necessary to obtain final approval. Class Counsel will also
19 be responsible for drafting the application for the Named Plaintiff Award and Attorney's Fees and
20 Costs, and a request for approval of the Administrator Payment, to be heard at the Final Approval
21 Hearing.

22 69. Release by Plaintiff, the Settlement Group and LWDA. Upon the Effective Date
23 and conditioned upon full satisfaction of the payment obligations in Paragraph 59, Plaintiff and all
24 Participating Class Members will be deemed to have released the Released Claims; and the
25 LWDA and all PAGA Group Members will be deemed to have released the Released Claims
26 brought under PAGA regardless of whether PAGA Group Members opt out of the Class
27 Settlement, and will be barred from bringing or prosecuting any of the Released Claims against
28 the Released Parties.

1 70. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
2 the Court or after the Final Approval Hearing, the Parties will present the Judgment to the Court
3 for its approval. After entry of the Judgment, under Code of Civil Procedure section 664.6, the
4 Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and
5 enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such
6 post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement
7 Agreement.

8 71. Release by Plaintiff. Upon the Effective Date, in addition to the claims being
9 released by all Participating Class Members and PAGA Group Members, Plaintiff will release and
10 forever discharge the Released Parties, to the fullest extent permitted by law, of and from any and
11 all claims, known and unknown, asserted and not asserted, which Plaintiff have or may have
12 against the Released Parties as of the date of execution of this Settlement Agreement. To the
13 extent the foregoing releases are releases to which Section 1542 of the California Civil Code or
14 similar provisions of other applicable law may apply, Plaintiff expressly waive any and all rights
15 and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code
16 or similar provisions of applicable law, which are as follows:

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

23 Notwithstanding the above, nor anything else in this Agreement, the waiver and release in this
24 Settlement does not apply to (i) those rights that as a matter of law cannot be waived, including,
25 but not limited to, workers' compensation claims, pending or otherwise and/or benefits to be
26 received by Named Plaintiff in workers' compensation pursuant to the jurisdiction of workers'
27 compensation; and (ii) rights or claims arising out of this Agreement.

28 72. Exhibit Incorporated by Reference. The terms of this Settlement Agreement

1 include the terms set forth in the attached Exhibit, which is incorporated by this reference as
2 though fully set forth herein. Any Exhibit to this Settlement Agreement is an integral part of the
3 Settlement.

4 73. Entire Agreement. This Settlement Agreement and attached Exhibit constitute the
5 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
6 agreements may be deemed binding on the Parties. The Parties expressly recognize California
7 Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide
8 that a written agreement is to be construed according to its terms and may not be varied or
9 contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
10 representations or terms will modify, vary or contradict the terms of this Settlement Agreement.

11 74. Amendment or Modification. Except as to non-material changes required by the
12 Court, no amendment, change, or modification to this Settlement Agreement will be valid unless
13 in writing and signed by the Parties. Concerning non-material changes required by the Court, the
14 Parties agree that their counsel may submit stipulated amendments to this Settlement Agreement
15 without obtaining further signatures from the Parties.

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

26 76. Binding on Successors and Assigns. This Settlement Agreement will be binding
27 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
28 defined.

1 77. California Law Governs. All terms of this Settlement Agreement and Exhibit
2 hereto will be governed by and interpreted according to the laws of the State of California.

3 78. Execution and Counterparts. This Settlement Agreement is subject only to the
4 execution of all Parties. However, the Settlement Agreement may be executed in one or more
5 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
6 of the signature page, will be deemed to be one and the same instrument provided that counsel for
7 the Parties will exchange among themselves original signed counterparts.

8 79. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
9 this Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have
10 arrived at this Settlement after adversarial and arm's-length negotiations before a well-respected
11 and neutral mediator, in the context of adversarial litigation, and taking into account all relevant
12 factors, present and potential. The Parties further acknowledge that they are each represented by
13 competent counsel and that they have had an opportunity to consult with their counsel regarding
14 the fairness and reasonableness of this Settlement.

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

19 81. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however,
20 that either party may appeal any court order that materially alters the Settlement Agreement's
21 terms.

22 82. Notices. Unless otherwise specifically provided herein, all notices, demands or
23 other communications given hereunder shall be in writing and shall be deemed to have been duly
24 given as of the third business day after mailing by United States registered or certified mail, return
25 receipt requested, addressed as follows:

26 To Plaintiff and the Settlement Class:

27 Zachary M. Crosner
28 CROSNER LEGAL, P.C.
 9440 Santa Monica Blvd., Ste. 301

4853-3198-8531.1

Los Angeles, CA 90210

To Defendant:

Sumy Kim
LEWIS BRISBOIS BISGAARD & SMITH LLP
333 Bush Street, Ste. 1100
San Francisco, CA 94104

83. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Settlement, Defendant does not admit, and specifically denies, that it violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to their employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

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

85. Enforcement Actions. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions.

1 86. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
2 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
3 construed more strictly against one party than another merely by virtue of the fact that it may have
4 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-
5 length negotiations between the Parties, all Parties have contributed to the preparation of this
6 Settlement Agreement.

7 87. Representation By Counsel. The Parties acknowledge that they have been
8 represented by counsel throughout all negotiations that preceded the execution of this Settlement
9 Agreement, and that this Settlement Agreement has been executed with the consent and advice of
10 counsel. Further, Plaintiff and Plaintiff's Counsel warrant and represent that there are no liens on
11 the Settlement Agreement.

12 88. All Terms Subject to Final Court Approval. All amounts and procedures described
13 in this Settlement Agreement herein will be subject to final Court approval.

14 89. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
15 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
16 this Settlement Agreement.

17 90. Binding Agreement. The Parties warrant that they understand and have full
18 authority to enter into this Settlement Agreement, and further intend that this Settlement
19 Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible
20 and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation
21 confidentiality provisions that otherwise might apply under federal or state law.

22 91. Interim Stay of Proceedings. The Parties agree to stay and hold all proceedings in
23 the Action, except such proceedings necessary to implement and complete the Settlement, in
24 abeyance pending the Final Approval to be conducted by the Court.

25 92. Confidentiality. Plaintiff, Plaintiff's Counsel, Defendant and Defendant's Counsel
26 agree that they will not issue any press releases, initiate any contact with the press, respond to any
27 press inquiry or have any communication with the press about the fact, amount or terms of the
28 Settlement Agreement prior to Preliminary Approval. Nothing in this Settlement Agreement shall

1 limit Defendant's ability to fulfill disclosure obligations reasonably required by law or in
2 furtherance of business purposes, including the fulfillment of obligations stated in this Settlement
3 Agreement.

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5 **SIGNATURES FOLLOW ON NEXT PAGE**
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SIGNATURES

PLAINTIFF

DEFENDANT

DATED: 10 / 20 / 2022

DATED:

By  _____
Xavier Hunter

By _____
Name
Title
72 Hour, LLC

APPROVED AS TO FORM:

DATED: 10/19/2022

DATED:

By  _____
Zachary M. Crosner
Crosner Legal, P.C.
Attorneys for Xavier Hunter

By _____
Sumy Kim
Lewis Brisbois Bisgaard & Smith LLP
Attorneys for 72 Hour, LLC

SIGNATURES

PLAINTIFF

DEFENDANT

DATED:

DATED: 10/27/2022

By

Xavier Hunter

By

DocuSigned by:

Melvin Cooper

3712979F75CD40B...
Name

Melvin Cooper

Title owner

72 Hour, LLC

APPROVED AS TO FORM:

DATED:

DATED: October 27, 2022

By

Zachary M. Crosner
Crosner Legal, P.C.

Attorneys for Xavier Hunter

By

Sumy Kim
Sumy Kim

Lewis Brisbois Bisgaard & Smith LLP

Attorneys for 72 Hour, LLC