

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into on the 18th day of July, 2016 in the action currently pending in the United States District Court for the Eastern District of New York, Docket No.14 Cv. 2970 (RML) (the “Action”) by and between the named Plaintiffs, Marco Antonio Flores, Antonio Santos and Oscar Tudon and all of the Opt-In Plaintiffs, as that term is hereinafter defined, (the Named Plaintiffs and Opt-In Plaintiffs are hereinafter collectively referred to as the “Plaintiffs”) and Defendants, Five Star Carting, LLC (“Five Star LLC”), Five Star Carting, Inc. (“Five Star Inc.”), Workforce Cleaning Services, LLC, (“Workforce and with Five Star LLC and Five Star Inc. collectively the “Company Defendants”) Anthony Tristani and Nino Tristani (Anthony and Nino are collectively the “Individual Defendants” and together with the Company Defendants collectively the “Defendants”), jointly and severally. Plaintiffs and Defendants are each a “Party” and collectively the “Parties”).

WITNESSETH:

WHEREAS, on or about May 9, 2014, Plaintiffs filed the Class and Collective Action Complaint, followed by an Amended Class and Collective Action Complaint on June 20, 2014 and a Second Amended Class and Collective Action Complaint on July 7, 2015 (“Second Amended Complaint”) in the Action, alleging that the Company Defendants failed to pay wages in accordance with the Fair Labor Standards Act (“FLSA”) and the New York Labor Law (“NYLL”) and seeking, among other relief, compensatory damages, punitive damages, liquidated damages, and attorneys’ fees and costs;

WHEREAS, Defendants answered the Second Amended Complaint denying the material allegations asserted by Plaintiffs in the Second Amended Complaint;

WHEREAS, Plaintiffs' Motion to Conditionally Certify a FLSA Collective Action was granted on October 30, 2015 (the "Conditional Motion to Certify"); and

WHEREAS, prior to the Conditional Motion to Certify and pursuant to a notice sent out in connection with the Conditional Motion to Certify sixty-one (61) individuals who signed and filed consents to join the Action ("Opt-In Plaintiffs") signed and filed consents to join in the Action as Plaintiffs, each of the Opt-In Plaintiffs are identified in Exhibit A annexed hereto and made a part hereof; and

WHEREAS, the Parties to the Action now desire to settle fully and finally all employment-related claims and possible employment-related claims that Plaintiffs had, have or may have had against Defendants, including, but not limited to, those claims embodied in the Second Amended Complaint, without further litigation and without any finding of fact or admission of liability, wrongdoing or fault.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the Parties agree as follows:

1) **Non-Admissions of Liability**. This Agreement shall not in any way be construed as an admission by the Defendants of a violation of any right of any of the Plaintiffs under the FLSA, NYLL or otherwise. The Defendants, for themselves both in their official and individual capacities, as well as on behalf of their parents, affiliates, subsidiaries, officers, directors, supervisors, employees, agents, heirs, executors, administrators, assigns, beneficiaries, and representatives, expressly deny violating any right of any of the Plaintiffs based on federal, state or local law pertaining to employment or wages or any other basis relating to their employment by the Company Defendants and expressly deny any liability to any of the Plaintiffs. Accordingly, this Agreement resolves all employment-related issues between Plaintiffs and the Defendants

thereby, compromising, resolving and settling all disputed claims, and, as such, is not an admission by any party as to the merits of such claims and this Agreement. The contents of this Agreement shall not be admissible in any proceeding as evidence of any fact or conclusion against Defendants, except only that this Agreement may be introduced in a proceeding arising from a breach of the Agreement. Moreover, Defendants deny any liability for any actions of, and any violations of any federal or state employment, labor or tax law, performed by Paul Hidalgo or any company owned and/or operated by Paul Hidalgo, including, but not limited to PAH Services Inc. and TAH Cleaning Services Inc. (PAH and TAH are collectively the “Hidalgo Companies”), during the period from May 9, 2008 to the present,

2) **Payment.** In complete settlement of any and all employment-related claims, including claims for actual, compensatory, punitive or other damages, as well as attorneys’ fees and costs that Plaintiffs had, have or may have against the Defendants, their parents, affiliates, subsidiaries, officers, directors, supervisors, employees, agents and representatives and in consideration for the promises and obligations set forth herein, the Defendants shall pay to Plaintiffs and Plaintiffs’ counsel, Pelton Graham LLC, the total gross settlement amount of four hundred thousand dollars (\$400,000.00) (the “Settlement Amount”). Defendants are jointly and severally obligated to pay the Settlement Amount pursuant to this Agreement.

a) The Settlement Amount shall be paid to the Plaintiffs and their counsel, Pelton Graham LLC, as is set forth in the allocation attached hereto as Exhibit “A.” The allocation to each Plaintiff is based on each Plaintiff’s respective dates of employment and damages amount, as was approved by the Court.

Plaintiffs’ counsel will provide written notice to each of the Plaintiffs, with a copy to Defendants and their counsel that the allocation was made by Plaintiffs’ counsel, was based on

each Plaintiff's respective dates of employment and damages amount as was approved by the Court, and that Defendants and their counsel had no role whatsoever in making the allocation calculations.

Defendants shall make payment of the Settlement Amount at one time by payment of separate settlement checks ("Settlement Check(s)") to each of the Plaintiffs and Plaintiffs' counsel, Pelton Graham LLC, to be delivered to Pelton Graham LLC no later than thirty (30) days after the Court's approval of the Agreement.

b) All payments to Plaintiffs and Plaintiffs' counsel will be subject to 1099 withholdings. Plaintiffs' counsel will provide Defendants with the information necessary for Defendants to complete each of the 1099 Forms to be issued to the Plaintiffs and an IRS form W9 for Pelton Graham LLC and such information and W-9 Form will be provided prior to Defendants' issuance of the Settlement Checks;

c) Each of the Plaintiffs agree that, in the event any local, state or federal agency or court determines that any portion of the Settlement Amount is subject to the additional payment of taxes, it shall be solely Plaintiffs' responsibility to pay such taxes and Plaintiffs hereby hold the Defendants harmless from such taxes and hereby agree to indemnify the Defendants against any liability for such taxes and any resulting penalties or interest. Moreover, to the extent that any tax liability is or has been assessed against non-party Paul Hidalgo or the Hidalgo Companies or any company to which Paul Hidalgo is an owner relating to the employment of Plaintiffs, Defendants will not be liable for such tax liabilities.

d) In the event Defendants fail to pay the Settlement Checks when due as set forth in paragraph (2)(a), Plaintiffs' counsel shall send a notice of default to Defendants' counsel via U.S. Mail and e-mail at Frost & Miller, LLP, Att. Kenneth N. Miller, Esq., 260 Madison Avenue, 16th

Floor, New York, New York 10016, and kmiller@frostmillerllp.com Defendants shall have ten (10) calendar days from the date of said notice to cure default. In the event that payment is not made within the opportunity to cure period, Plaintiffs reserve the right to enforce the settlement in Court plus interest and any attorneys' fees and costs associated with enforcing the settlement.

3) **Plaintiffs' ¹ Release.** Plaintiffs, on behalf of themselves and their heirs, executors, administrators, assigns, agents and beneficiaries, if any, hereby release the Defendants, in their official and individual capacities, and their parents, affiliates, subsidiaries, officers, directors, supervisors, employees, agents, heirs, executors, administrators, assigns, beneficiaries and representatives (collectively the "Releasees"), from any and all legal, equitable or other claims, counterclaims, demands, setoffs, defenses, contracts, accounts, suits, debts, agreements, actions, causes of action, sums of money, reckonings, bonds, bills, specialties, covenants, promises, variances, trespasses, damages, extents, executions, judgments, findings, controversies and disputes, and any past, present or future duties, responsibilities, or obligations of any nature whatsoever, existing from the beginning of the world through the date hereof, which are now known or unknown, related to or arising out of any applicable federal, state or local employment law, including but not limited to, claims under the Fair Labor Standards Act, New York Labor Law, and claims relating to, or arising under, any other federal, state, or local statute or regulation that concerns hours worked, the payment of wages, or employment, including the following:

¹ Each Settlement Check will contain a release such that any Plaintiff who cashes or deposits his/her Settlement Check thereby automatically releases Defendants from the Released Claims (as defined in Section 3). Each Settlement Check shall contain the following language: By endorsing, depositing, cashing, or negotiating this check, I release Defendants from all claims I have or may have under the FLSA, NYLL and all other laws pertaining to my employment by Defendants, including, but not limited to, alleged unpaid wages, overtime wages, wage notice, wage statement, liquidated damages, interest and attorneys' fees, all as more fully set forth in the Settlement Agreement in the *Flores et al. v. Five Star Carting, LLC et al., 2:14 CV 2970 (RML)* action.

a) any and all claims under any and all federal, state or local laws including, but not limited to claims under the fair employment practice laws or other employment related laws of the United States and all jurisdictions, states, municipalities and localities, including, but not limited to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq., the Civil Rights Act of 1991; the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634; the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., the Civil Rights Act of 1866, 42 U.S.C. § 1981, the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 et seq., the National Labor Relations Act, 29 U.S.C. §§ 151, et seq., the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq., the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461, New York Labor Law, the New York State Human Rights Law, the New York Executive Law §§ 290 et seq., and the New York City Human Rights Law, N.Y.C. Administrative Code, tit. 8, §§ 8-101 et seq.; and

b) any and all claims for wages, bonuses, commissions, vacation pay, employee fringe benefits, reimbursement of expenses, monetary and/or equitable relief, punitive and compensatory relief, and/or attorneys' fees and/or costs.

c) With the following exceptions: Plaintiff Marco Antonio Flores does not release his personal injury claim currently pending in the Supreme Court of New York, Kings County, Index No. 506895/2014 or his pending Workers' Compensation Claim. Moreover, none of the Plaintiffs release any pending or potential Workers' Compensation Claims.

4) **Mutual Non-Disparagement.** The parties agree that neither will engage in any conduct or communication that will disparage the other.

5) **Entire Agreement.** This Agreement represents the entire understanding between the Parties hereto, and fully supersedes any and all prior agreements or understandings between

them, whether written or oral. The Parties agree that, other than as provided in this Agreement, they have no further obligation of any kind to one another except as contained in this Agreement.

6) **Changes To Agreement.** This Agreement may not be changed, amended, modified or terminated except by a written instrument signed by each of the Parties to this Agreement.

7) **Severability.** In the event that any provision of this Agreement is held by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining provisions shall not be affected; and, the illegal or invalid provisions shall be reformed to the extent possible to be consistent with the other terms of this Agreement; and, if such provisions cannot be so reformed, they shall not be deemed to be a part of this Agreement.

8) **Applicable Law.** This Agreement shall in all respects be interpreted, enforced, and governed under the laws of the State of New York. The Parties consent to exclusive jurisdiction in the United States District Court for the Eastern District of New York.

9) **Acknowledgment.** Plaintiffs acknowledges that the consideration provided to them under this Agreement is in addition to anything of value to which they are already entitled to receive and that they would not receive said consideration but for their execution of this Agreement. Further, Plaintiffs acknowledge that they have consulted with their attorneys from Pelton Graham LLC in connection with this Settlement Agreement; that Plaintiffs know and understand the binding effect of this Agreement and that Plaintiffs voluntarily and knowingly agrees to the terms of this Agreement, and any waivers he has made herein are knowing, voluntary, conscious and with full appreciation that he is forever foreclosed from pursuing any of the rights so waived.

10) **Waiver.** By the named Plaintiffs signing this Agreement as agent for all of the Plaintiffs, each of the Plaintiffs acknowledges that:

- a) They have carefully read, and understand, this Agreement;
- b) They understand that this Agreement is **LEGALLY BINDING** and by signing it they give up certain rights;
- c) They have been given sufficient time to consider their rights and obligations under this Agreement;
- d) They have voluntarily chosen to enter into this Agreement and have not been forced or pressured in any way to sign it;
- e) They **KNOWINGLY AND VOLUNTARILY RELEASE** the Defendants, in their official and individual capacities, and their parents, affiliates, subsidiaries, officers, directors, supervisors, employees, agents, heirs, executors, administrators, assigns, beneficiaries and representatives, from any and all employment-related claims they may have, known or unknown, in exchange for the payments and benefits they have obtained by signing, and that these payments and benefits are in addition to any benefit he would have otherwise received if he did not sign this Agreement;
- f) The Release in this Agreement includes a **WAIVER OF ALL RIGHTS AND CLAIMS** they may have under the Fair Labor Standards Act (29 U.S.C. §201 et seq.) and/or the New York Labor Law §§ 190 *et seq.* and §§650 *et seq.*; and
- g) This Agreement does not waive any rights or claims that may arise after this Agreement is signed and becomes effective.

11) **Representation and Warranties of Plaintiffs.** The named Plaintiffs represent and warrant to Defendants, with the full knowledge that Defendants are relying upon such representation and warranty in agreeing to enter into this Settlement Agreement, that they have the authority to act as agents for the Opt-In Plaintiffs and by signing this Settlement Agreement the

named Plaintiffs have the authority to bind the Opt-In Plaintiffs, and that the Opt-In Plaintiffs will be bound, to the terms and conditions of this Settlement Agreement.

Plaintiff acknowledge that while certain of the Plaintiffs were members of the League of International Federated Employees and its local 890 (the "Union") during the time they were employed by the Company Defendants, these Plaintiffs are participating in the Settlement based upon claims which arose before they joined the Union. Further, Plaintiffs acknowledge and agree that pursuant to the order of the Court entered October 30, 2015 in the Action, Union members employed by the Company Defendants are not part of the putative FLSA Collective Action and the NYLL class action and that any claims by such Union members during the applicable collective and class periods would be governed strictly by the Union's collective bargaining agreement with the Company Defendants and this Settlement Agreement does not impact upon or in any manner affect the grievance procedure set forth in the said collective bargaining agreement.

12) **Dismissal with Prejudice.** Upon Court approval of this Settlement Agreement, the Plaintiffs shall fully and finally dismiss all their claims in this Action against Anthony Tristani and Nino Tristani, with prejudice, pursuant to Fed. R. Civ. P. 41 (a)(1)(A) in the form of the stipulation attached hereto as Exhibit B. Thereafter, Plaintiff shall fully and finally dismiss all their claims in this Action against the other Defendants, Five Star Carting, LLC, Five Star Carting, Inc. and Workforce Cleaning Services, LLC, with prejudice, pursuant to Fed. R. Civ. P. 41 (a)(1) and (c) in the form of the stipulation attached hereto as Exhibit C.


13) **Execution in Counterparts.** This Agreement may be executed in counterparts and/or by facsimile or other electronic transmission, each of which when executed shall be deemed

to be an original and all of which together shall constitute a single instrument binding upon the Parties.

14) **Signatures.** The Parties hereby signify their agreement to the above terms by their signatures below.


[SIGNATURE PAGES FOLLOW]

On behalf of FIVE STAR CARTING, LLC,

By: 
Name: Nino Tristani
Title: VP

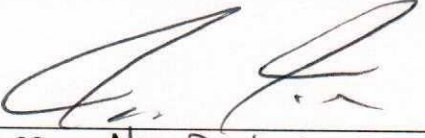
Date: 7-18-16

On behalf of FIVE STAR CARTING, INC.

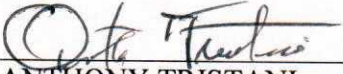
By: 
Name: Nino Tristani
Title: VP

Date: 7-18-16


On behalf of WORKFORCE CLEANING SERVICES, LLC

By: 
Name: Nino Tristani
Title: member

Date: 7-18-16


ANTHONY TRISTANI
Defendant

Date: 7-18-16


NINO TRISTANI
Defendant

Date: 7-18-16

MARCO ANTONIO FLORES
Plaintiff

Date: _____

On behalf of FIVE STAR CARTING, LLC,

By: _____
Name:
Title:

Date: _____

On behalf of FIVE STAR CARTING, INC.

By: _____
Name:
Title:

Date: _____

On behalf of WORKFORCE CLEANING SERVICES, LLC

By: _____
Name:
Title:

Date: _____

ANTHONY TRISTANI
Defendant

Date: _____

NINO TRISTANI
Defendant

Date: _____



MARCO ANTONIO FLORES
Plaintiff

Date: 7/29/2016

Antonio Santos Valdez

ANTONIO SANTOS
Plaintiff

Date: 7-18-2016

Oscar Tudon

OSCAR TUDON
Plaintiff

Date: 7-21-2016

[END OF SIGNATURE PAGES]