

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JOAN HARP, an individual [Former] Class
Representative On Behalf of Herself and All
Others Similarly Situated Non-Exempt Former
and Current Employees; *et al.*,

Plaintiffs,

v.

STARLINE TOURS OF HOLLYWOOD,
INC., a California corporation; EHM
PRODUCTIONS, INC.; *et al.*

Defendants.

Case No. 2:14-cv-07704

Judge: Hon. Christina A. Snyder

**CLASS ACTION SETTLEMENT
AGREEMENT**

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

1. RECITALS

1.1.1 Class Counsel previously commenced a related action in state court entitled, *Joan Harp et al. v. Starline Tours of Hollywood, Inc., et al.*, Los Angeles Superior Court No. BC508951 (the “State Harp Action”). The State Harp Action asserted various wage and hour claims against Starline Tours of Hollywood, Inc. (“Starline”) and various affiliated parties in connection with the payment of tour and other bus drivers on Starline’s various sightseeing tours. Defendant was not originally named in this action, but was later added, pursuant to a DOE amendment, as a defendant (on a joint employment theory) in connection with the TMZ Hollywood Tour, which is one (just one) of the many tours operated by Starline. The TMZ Hollywood Tour involved just three buses out of Starline’s vast fleet of sightseeing vehicles.

21
22
23
24
25
26
27
28

1 **1.1.3** The Court retained jurisdiction over the federal FLSA claim and that
2 claim is proceeding. The Court granted conditional (Stage 1) certification of a collective
3 action on July 27, 2015 – specifically, a broader collective action of all drivers who
4 worked for Starline during the statutory period and a narrower sub-collective action
5 consisting of the smaller subset of persons who drove the TMZ Hollywood Tour. Notice
6 was issued and two persons opted in to the TMZ Hollywood Tour sub-collective, one of
7 whom subsequently rescinded his request to opt-in. The Court has scheduled a deadline of
8 May 8, 2017 for the parties to submit Stage 2 Motions to Decertify. No trial date has been
9 set.

10 **1.1.4** The Court, in declining to exercise jurisdiction over the state law
11 claims, never remanded those claims/action or otherwise re-vested jurisdiction in the Los
12 Angeles Superior Court. The status of these state law claims is unresolved. The Court
13 denied Class Counsel’s Notice of Motion and Motion to Remand This Case to California
14 State in Los Angeles County, California and the Los Angeles Superior Court has declined
15 to act on the claims in light of the current procedural posture.

16 **1.1.5** The State Harp Action and this Action are referred to herein
17 collectively as the “Related Actions.”

18 **1.1.6** Of the named Plaintiffs in this Action, only William Brockman
19 worked on the TMZ Hollywood Tour.

20 **1.1.7** Class Counsel is counsel of record in all of the Related Actions, and
21 has conferred with Plaintiffs in the Related Actions, all of whom support this settlement
22 and will cooperate to implement its terms.

23 **1.2** The Parties desire to resolve the claims against Defendant (and the other Released
24 Parties) in the Related Actions, promptly and without unnecessary complexity or cost.
25 Accordingly, the Parties engaged in informal, arms-length, and vigorously-contested settlement
26 discussions. These settlement discussions followed extensive and protracted litigation and
27 discovery in the Related Actions, which afforded Class Counsel more than sufficient information
28

1 to evaluate the claims and potential defenses, and to meaningfully conduct informed settlement
2 discussions.

3 **1.3** The Settlement Class Representative and Class Counsel believe that the FLSA
4 Settled Claims and Non-FLSA Settled Claims (collectively, the “Settled Claims”) (and
5 specifically Defendant’s role as a joint employer of the TMZ Hollywood Tour drivers) have merit
6 and that the evidence developed to date supports their claims, but also acknowledge that their
7 primary claims are against Starline (not Defendant), and that they will have to face the task of
8 establishing that Defendant was a joint employer. The Settlement Class Representative and Class
9 Counsel also recognize the expense and length of continued proceedings necessary to prosecute
10 the claims through trial, appeals, and ancillary actions, as well as the risk of any litigation and thus
11 the possibility of an adverse outcome. The Settlement Class Representative and Class Counsel
12 believe that the settlement set forth in this Agreement confers substantial benefits upon the
13 Settlement Class and, all things considered, is in the best interest of the Settlement Class.

14 **1.4** Defendant has denied and continues to deny any liability with respect to any and all
15 of the Settled Claims and has denied and continues to deny all charges of wrongdoing or liability
16 against it arising out of or relating to any conduct, acts, or omissions alleged or that could have
17 been alleged in the Related Actions. Defendant’s willingness to resolve the Settled Claims on the
18 terms and conditions embodied in this Agreement is based on, among other things: (i) the time
19 and expense associated with litigating the Settled Claims through trial and any appeals; (ii) the
20 benefits of resolving the Settled Claims without further litigation, including limiting further
21 inconvenience and distraction, disposing of burdensome and protracted litigation, and permitting
22 Defendant to conduct its business unhampered by the distractions of continued litigation; and
23 (iii) the uncertainty and risks inherent in any litigation

24 **1.5** **NOW, THEREFORE**, subject to Court approval, the Parties hereby agree that the
25 Settled Claims shall be settled and compromised as to the Released Parties in consideration of the
26 promises and covenants, and in accordance with the terms and conditions, set forth herein.

1 **2. DEFINITIONS**

2 As used in this Agreement, in addition to any definitions elsewhere in this
3 Agreement, the following terms are defined as follows:

4 **2.1 “Action”** means and refers to *Harp et al. v. Starline Tours of Hollywood, Inc. et al.*,
5 removed to the United States District Court for the Central District of California, Case No. 2:14-
6 cv-07704-CAS-E.

7 **2.2 “Agreement”** and **“Settlement Agreement”** mean and refer to this Settlement
8 Agreement.

9 **2.3 “Class Counsel”** means and refers to Dennis P. Wilson, of the Law Offices of
10 Dennis P. Wilson, and Julia A. Mercado, of Aparicio-Mercado Law, L.C.

11 **2.4 “Class Counsel Fees and Cost Award”** means and refers to the amount finally
12 awarded by the Court to Class Counsel for services rendered and costs and expenses incurred in
13 prosecuting the Related Actions against Defendant.

14 **2.5 “Class Period”** means and refers to the period from December 28, 2008 through
15 and including May 11, 2016.

16 **2.6 “Court”** means and refers to the United States District Court for the Central
17 District of California.

18 **2.7 “Defendant”** means and refers to Defendant EHM Productions Inc.

19 **2.8 “Employment Taxes”** means and refers to all amounts which an employer is
20 required by state or federal law to withhold from wages paid to employees, or pay in taxes as a
21 consequence of making payment of wages to an employee, either on its own behalf or on behalf of
22 the employee, including without limitation withholding of federal and state income taxes and
23 payment of the employer’s and the employee’s portion of FICA, Medicare taxes, and California
24 State Disability Insurance.

25 **2.9 “Effective Date”** means and refers to the latest of: (i) the date of final affirmance as
26 to an appeal of the Final Approval Order; (ii) the date of final dismissal with prejudice of any
27
28

1 appeal from the Final Approval Order; or (iii) if no appeal is filed, the expiration date of the time
2 for filing or noticing of any form for valid appeal from the Final Approval Order.

3 **2.10 “Final Approval” and “Final Approval Order”** means and refers to the Court’s
4 order finally approving this Agreement and final judgment.

5 **2.11 “Final Approval Hearing”** means and refers to the hearing at which the Court will
6 determine whether to finally approve this Agreement.

7 **2.12 “FLSA Settled Claims”** means and refers to any and all claims, liabilities, rights,
8 demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and
9 causes of action known or unknown, asserted or unasserted, contingent or accrued, that Settlement
10 Class Members may have or have had at any time during the Class Period against anyone,
11 including any Released Party, for alleged violations of the federal Fair Labor Standards Act
12 (“FLSA”). The FLSA Settled Claims include claims that the Settlement Class Members do not
13 know or suspect to exist in their favor at the time of the release that do arise, or could have arisen,
14 out of their provision of bus driving services or duties in connection with the TMZ Hollywood
15 Tour, which, if known by them, might have affected their decision to release the Released Parties
16 or might have affected their decision not to object to this settlement. **The FLSA Settled Claims**
17 **do not include claims that Settlement Class Members may have or have had against anyone**
18 **arising from the provision of bus driving services or duties in connection with any other**
19 **tours or operations conducted by Starline – i.e., any tours or operations other than the TMZ**
20 **Hollywood Tour.**

21 **2.13 “Gross Settlement Amount”** means and refers to Defendant’s total funding
22 obligation under this Agreement of Forty Thousand Dollars (\$40,000).

23 **2.14 “Net Settlement Amount”** means and refers to the funds that will be distributed to
24 Participating Settlement Class Members under this Agreement after payment of any Class Counsel
25 Fees and Cost Award, Settlement Administration Costs, Employment Taxes, and the PAGA
26 Payment (to the LWDA).

1 **2.15 “Non-FLSA Settled Claims”** means and refers to any and all claims, liabilities,
2 rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions,
3 and causes of action known or unknown, asserted or unasserted, contingent or accrued, that
4 Settlement Class Members may have or have had at any time during the Class Period against
5 anyone, including any Released Party, for alleged violations of the California Labor Code,
6 Industrial Welfare Commission Wage Orders, California’s Private Attorneys General Act of 2004,
7 California’s Unfair Competition Law, and any other federal, state, and local, statutory,
8 constitutional, contractual, or common law claims arising from, or which could have arisen from,
9 the provision of bus driving services or duties in connection with the TMZ Hollywood Tour
10 (including any chartered operations operated under the TMZ Hollywood Tour name) operated by
11 Starline or any related entities, including, but not limited to, claims- arising from or related to any
12 alleged failure to pay overtime, regular, minimum, and reporting time wages, failure to provide
13 meal and rest periods and accurate itemized wage statements, failure to timely pay wages upon
14 termination, and failure to reimburse business expenses. Notwithstanding the immediately
15 preceding sentence, the term Non-FLSA Settled Claims expressly excludes any claim under the
16 FLSA. The Non-FLSA Settled Claims include claims that the Settlement Class Members do not
17 know or suspect to exist in their favor at the time of the release that do arise, or could have arisen,
18 out of their provision of bus driving services or duties in connection with the TMZ Hollywood
19 Tour, which, if known by them, might have affected their decision to release the Released Parties
20 or might have affected their decision not to object to this settlement. **The Non-FLSA Settled**
21 **Claims do not include claims that Settlement Class Members may have or have had against**
22 **anyone arising from the provision of bus driving services or duties in connection with any**
23 **other tours or operations conducted by Starline – i.e., any tours or operations other than the**
24 **TMZ Hollywood Tour.**

25 **2.16 “Notice”** means and refers to the class notice substantially in the form attached
26 hereto as Exhibit 1, as approved by the Court.

2.17 “PAGA Allocation” and “PAGA Payment,” respectively, mean the portion (\$3,000) of the Gross Settlement Amount which is allocated to and designated as penalties pursuant to California’s Private Attorneys General Act of 2004 (“PAGA”), seventy-five percent (75%) of which, or \$2,250, shall be paid to the California Labor and Workforce Development Agency (the “LWDA”).

2.18 “Participating Settlement Class Members” means and refers to Settlement Class Members who do not timely submit a valid request to be excluded from the settlement.

2.19 “Parties” means and refers to the Settlement Class Representative, individually and on behalf of the Settlement Class, and Defendant.

2.20 “Person” means an individual and all legal entities, including corporate entities.

2.21 “Preliminary Approval” and “Preliminary Approval Order” means and refers to the Court’s order preliminarily approving this Agreement.

2.22 “Preliminary Approval Hearing” means and refers to the hearing at which the Court will determine whether to preliminarily approve this Agreement.

2.23 “Qualified Settlement Fund” means the fund established by the Settlement Administrator pursuant to Internal Revenue Code Section 1.468B-1, into which the Gross Settlement Amount shall be deposited, less any funds advanced to the Settlement Administrator for purposes of administering the settlement.

2.24 **“Released Parties”** means and refers to EHM Productions Inc., TMZ Productions Inc., Telepictures Productions Inc., Time Warner Inc., Warner Bros. Entertainment Inc., and each of their respective past, present, and future officers, directors, employees, partners, members, shareholders, agents, subsidiaries, divisions, parent companies, predecessors, successors, affiliates, and other related entities.

2.25 “Response Deadline” means the date sixty (60) calendar days after the Settlement Administrator mails Notice to Settlement Class Members, which is the last date upon which Settlement Class Members may submit a valid request for exclusion from or objection to the settlement.

1 **2.26** “**Settlement Administrator**” means and refers to Simpluris, Inc.

2 **2.27** “**Settlement Administration Costs**” means the amount that will be paid to the
3 Settlement Administrator for administering the settlement, which will be paid from the Gross
4 Settlement Amount. Presently, the Parties estimate incurring Three Thousand Dollars (\$3,000) in
5 Settlement Administration Costs.

6 **2.28** “**Settlement Class**” means and refers to all individuals who drove a tour bus (or
7 other sightseeing or touring vehicle) for the TMZ Hollywood Tour (including any chartered
8 operations operated under the TMZ Hollywood Tour name) operated by Starline or any related
9 entity at any time during the Class Period (each, a “Settlement Class Member”).

10 **2.29** “**Settlement Class List**” means and refers to the list of Settlement Class Members
11 that Defendant will compile from information reasonably requested from, and provided by,
12 Starline, and that will include each Settlement Class Member’s name, last known mailing address,
13 and dates of employment in connection with the TMZ Hollywood Tour. If Starline is unwilling to
14 provide last known address and social security number information (for the issuance of tax forms),
15 the Parties will jointly request an order from this Court compelling Starline to provide such
16 information to the Settlement Administrator for purposes of implementing the settlement. If
17 Starline is unable to provide such information, then the Parties will jointly request an order from
18 this Court compelling ADP, Starline’s payroll processor, or any successor payroll processor, to
19 provide such information to the Settlement Administrator for purposes of implementing the
20 settlement.

21 **2.30** “**Settlement Class Representative**” means and refers to William Brockman.

22 **2.31** “**Weeks Worked**” shall mean and refer to the total number of weeks worked by a
23 Settlement Class Member in connection with the TMZ Hollywood Tour, as specified on the
24 Settlement Class List.

25 **3. SETTLEMENT PURPOSES ONLY**

26 **3.1 Admissibility.** This Agreement is for settlement purposes only. This Agreement,
27 and any negotiations, documents or proceedings related thereto (including implementation thereof)

28

1 (collectively, the "Settlement Proceedings"), shall not be construed as, nor deemed to be evidence
2 of, any admission or concession by any of the Parties or any other Person regarding liability or the
3 appropriateness of class treatment, and shall not be offered or received as argument or evidence in
4 any action or proceeding by any Person for any purpose whatsoever; provided, however, that this
5 Agreement and the Settlement Proceedings may be presented to the Court in connection with the
6 implementation or enforcement of this Agreement, as well as any proceedings between Defendant
7 and Starline (or their respective related entities) related to Defendant's (and its related parties')
8 claim for a defense and indemnification from Starline.

9 **3.2 Limitation on Effect of Certification.** As part of his motion for Preliminary
10 Approval of this Settlement Agreement, Settlement Class Representative shall request certification
11 of the Settlement Class for settlement purposes only. Certification of the Settlement Class shall not
12 constitute, in the Related Actions, or any other proceeding, an admission of any kind by the
13 Released Parties, including, without limitation, that certification of a class for trial purposes is
14 appropriate or proper or that Settlement Class Representative could establish any of the requisite
15 elements for class treatment of any of the claims in the Related Actions, or any other proceeding.
16 In the event that the Settlement Agreement is not finally approved or is otherwise terminated or
17 rendered null and void, then certification of the Settlement Class shall be automatically vacated
18 and shall not constitute evidence or a binding determination that the requirements for certification
19 of a class for trial purposes in the Related Actions, or any other proceedings, are satisfied. In such
20 circumstances, Defendant expressly reserves all rights to challenge class certification for any
21 purpose and on all available grounds as if no class had been certified for settlement purposes in
22 this Action.

23 **4. JURISDICTION**

24 The Court has, and shall continue to have, jurisdiction to make any orders as may be
25 appropriate to effectuate, consummate, and enforce the terms of this Agreement, to
26 consider/approve Class Counsel's Fees and Costs Award, and to supervise the administration and
27 distribution of the Gross Settlement Amount.

1 **5. COURT APPROVAL OF THE SETTLEMENT**

2 **5.1 Preliminary Approval.** After execution of this Agreement, Class Counsel shall
3 move the Court for an order granting preliminary approval of this Agreement, including the
4 proposed form of Notice attached hereto as Exhibit 1, conditionally certifying the Settlement Class
5 for settlement purposes only, and setting a date for a Final Approval Hearing and, in connection
6 therewith, shall submit to the Court a mutually-acceptable proposed Preliminary Approval Order,
7 substantially in the form of the attached Exhibit 2.

8 **5.2 Final Approval.** Within 30 calendar days following the expiration of the Response
9 Deadline, if this Agreement has not been terminated in accordance with the procedures set forth
10 herein, Class Counsel shall file a motion for final approval of the settlement and, in connection
11 therewith, submit to the Court a mutually-acceptable proposed Final Approval Order substantially
12 in the form of the attached Exhibit 3.

13 **5.3 Stay And Dismissal Of Related Actions.** Within five (5) business days of the
14 execution of this Agreement, the Parties shall jointly move for a stay of all proceedings in this
15 Action as to Defendant and TMZ Productions, Inc., pending Preliminary Approval of the
16 settlement. (Defendant shall prepare the necessary motion, which Class Counsel shall join.)
17 Within five (5) business days of the Effective Date, Class Counsel shall cause the dismissal with
18 prejudice of any and all claims against Defendant in the State Harp Action.

19 **6. EXCLUSIONS AND OBJECTIONS**

20 **6.1 Procedure For Requesting Exclusion.** Settlement Class Members may opt out of
21 the settlement (thereby excluding themselves from the settlement) at any time prior to the
22 Response Deadline. To be valid, a request for exclusion must: (i) be in writing; (ii) contain the
23 Settlement Class Member's name and address; (iii) clearly state that the Settlement Class Member
24 requests exclusion from the settlement; (iv) be returned by mail to the Settlement Administrator at
25 the address specified in the Notice; and (v) be postmarked on or before the Response Deadline.
26 The date of the postmark on the return mailing envelope shall be the exclusive means used to
27 determine whether a request for exclusion has been timely submitted. Any Settlement Class
28

1 Member who timely submits a valid request for exclusion will not be entitled to any recovery
2 under the Settlement Agreement and will not be bound by the Settlement Agreement or have any
3 right to object, appeal, or comment thereon. All Settlement Class Members who do not timely
4 submit a valid request for exclusion will be deemed to have forever waived their right to opt out of
5 the Settlement Class, will be deemed Participating Settlement Class Members for all purposes
6 under this Agreement, and will be irrevocably bound by this Agreement and any final judgment
7 entered in this Action. The Settlement Administrator shall provide weekly updates to counsel for
8 the Parties as to any and all individuals who opt out of the Settlement Class. (A valid request for
9 exclusion may be rescinded unilaterally by the Settlement Class Member at any time prior to the
10 Response Deadline, or at any time after the Response Deadline with the consent of Defendant and
11 Class Counsel or upon order of the Court.)

12 **6.2 Procedure For Objecting.** Settlement Class Members who wish to object to the
13 Settlement Agreement must mail a written statement of objection (“Notice of Objection”) to the
14 Settlement Administrator no later than the Response Deadline. To be valid, a Notice of Objection
15 must: (1) contain the name and address of the person objecting; (2) contain a statement of the
16 Settlement Class Member’s objections; (3) contain a statement advising if the objecting Settlement
17 Class Member plans to address the Court at the Final Approval Hearing, and any legal briefs,
18 papers or memoranda the objecting Settlement Class Member proposes to submit to the Court; and
19 (4) be postmarked on or before the Response Deadline. The date of the postmark on the return
20 mailing envelope shall be the exclusive means used to determine whether an objection was timely
21 submitted. Settlement Class Members who fail to timely make objections in the manner specified
22 above shall be deemed to have waived any objections and shall be foreclosed from making any
23 objection (whether by appeal or otherwise) to the settlement. No later than twenty-eight (28)
24 calendar days before the Final Approval Hearing, the Settlement Administrator shall provide
25 counsel for the Parties with complete copies of all objections received, including the postmark
26 dates for each objection. No later than fourteen (14) calendar days before the Final Approval
27
28

1 Hearing, the Settlement Administrator shall submit to the Court a declaration attaching complete
2 copies of all objections received, including the postmark dates for each objection.

3 **6.3 Procedure for Contesting Weeks Worked:** Each Settlement Class Member will
4 have the opportunity to provide documentation and/or an explanation to show contrary evidence
5 regarding their Weeks Worked during the Class Period. To be valid, any such challenge must be
6 postmarked on or before the Response Deadline. Moreover, an individual can only dispute their
7 Weeks Worked if they do not exclude themselves from the settlement. If there is a dispute or
8 contrary evidence of an individual's Weeks Worked, the Settlement Administrator will consult
9 with the Parties to determine whether an adjustment is warranted. Counsel for each Party shall
10 meet and confer in an attempt to reach an agreement regarding whether a Weeks Worked
11 adjustment is warranted based on any documentary evidence submitted by the Settlement Class
12 Member. If the Parties cannot agree, the Settlement Administrator shall make the final
13 determination of whether or not a Weeks Worked adjustment is warranted based on the
14 documentary evidence submitted by the Settlement Class Member, and that determination shall be
15 conclusive, final and binding on all Parties, including all Settlement Class Members.

16 **6.4 Miscellaneous.** Except as provided herein, each member of the Settlement Class
17 shall bear their own attorneys' fees, costs, and expenses incurred in connection with any claim
18 against Defendant.

19 **7. SETTLEMENT TERMINATION**

20 **7.1 Termination If Court Approval Is Not Obtained.** This Agreement is expressly
21 conditioned upon: (i) Court approval of this Agreement, (ii) entry of the Preliminary Approval
22 Order substantially in the form of the attached Exhibit 2; and (iii) entry of the Final Approval
23 Order substantially in the form of the attached Exhibit 3. If the Court declines to enter either of
24 these orders, or materially modifies this Agreement or the content of such orders, any Party shall
25 have the right to terminate this Agreement.

1 **7.2 Termination After Expiration Of Response Period.** If any Settlement Class
2 Member opts out of the Settlement Class, Defendant shall have the right to terminate this
3 Agreement.

4 **7.3 Termination After Appeal.** If a court of appeal on review of this Agreement
5 and/or the Final Approval Order declares unenforceable, reverses, vacates, or materially modifies
6 this Agreement or the Final Approval Order, any Party shall have the right to terminate this
7 Agreement.

8 **7.4 Termination Procedure And Effect.** Any Party who elects to terminate this
9 Agreement pursuant to Sections 7.1, 7.2, or 7.3 may do so by giving written notice to the other
10 Party. Notice of termination pursuant to Section 7.2 must be given within 14 calendar days of the
11 expiration of the Response Deadline. Notice of termination pursuant to Sections 7.1 or 7.3 must
12 be given as soon as practicable if the Court declines to enter one of the orders or within 14
13 calendar days of the issuance of the order or modified order that gives rise to the right to
14 terminate. If such order is appealed, the deadline shall run from entry of the decision resolving the
15 appeal (including any further appeal taken). A Party, through its counsel, shall make reasonable
16 efforts to meet and confer with counsel for the other Party before it exercises its right to terminate
17 this Agreement. If this Agreement is terminated, the termination shall void all of the rights,
18 obligations, and releases under this Agreement, except for the provisions that are necessary to
19 effectuate such termination as well as Sections 3.1, 3.2, and 7.4 and any related definitions, which
20 shall survive such termination. Within fifteen (15) calendar days after notice of termination, the
21 Settlement Administrator shall return all settlement payments made by Defendant prior to such
22 termination (inclusive of interest and exclusive of notice and administration costs already
23 expended). If this Agreement is terminated before Defendant deposits sufficient funds to cover
24 the notice and administration costs already expended, Defendant shall send to the Settlement
25 Administrator an amount sufficient to cover such items within 30 calendar days after receipt of the
26 Settlement Administrator's schedule of the amounts due.

1 **8. FUNDING AND PAYMENTS UPON FINAL APPROVAL**

2 **8.1 Funding Upon Preliminary Approval.** Within fifteen (15) business days after
3 entry of the Preliminary Approval Order, Defendant shall mail or wire to the Settlement
4 Administrator a sum sufficient to pay for administrative expenses that are likely to be incurred
5 prior to the final approval hearing, including the cost of mailing Notice, to be deducted from the
6 Gross Settlement Amount. The time to make such payment may be extended by mutual consent
7 of the Parties.

8 **8.2 Funding Upon Final Approval.** Within fifteen (15) business days after the
9 Effective Date, Defendant shall deliver the balance of the Gross Settlement Amount (i.e., the
10 Gross Settlement Amount less the funds previously provided pursuant to Section 8.1) to the
11 Settlement Administrator to be deposited into the Qualified Settlement Fund. The time to make
12 such payment may be extended by mutual consent of the Parties. All interest generated by the
13 monies in the Qualified Settlement Fund will revert to the Net Settlement Amount for distribution
14 to Participating Class Settlement Members according to the terms and conditions herein.

15 **8.3 Payment of Settlement Administration Costs.** The Settlement Administration
16 Costs shall be paid out of the Gross Settlement Amount. The estimate of such costs for
17 implementation of the settlement is Three-Thousand Dollars (\$3,000). This estimate includes all
18 tasks required of the Settlement Administrator by this Agreement, including issuance of the
19 Notice, required tax reporting, including the issuance of W-2 forms (if any), the handling of
20 Settlement Class Member questions and disputes and the calculation of Employment Taxes, which
21 will be remitted to the tax authorities by the Settlement Administrator. Ten (10) business days
22 prior to the Final Approval Hearing, the Settlement Administrator shall provide the Parties with a
23 statement detailing the total Settlement Administration Costs and the total amount of Employment
24 Taxes to be deducted from the Gross Settlement Amount.

25 **8.4 Payment Of Class Counsel Fees And Costs Award.** Within 30 calendar days
26 following the expiration of the Response Deadline, Class Counsel shall move the Court for an
27 award of fees and costs – Class Counsel’s Fees and Costs Award – for their efforts in pursuing the
28

1 Related Actions. Class Counsel's application/request shall not exceed Fifteen Thousand and Eight
2 Hundred Dollars (\$15,800) in fees and Five Thousand Dollars (\$5,000) in costs. Class Counsel
3 agrees not to seek or accept any higher award in connection with this Settlement and the Settled
4 Claims; Class Counsel does not release any claim as to attorneys' fees in connection with any
5 claim that may continue as against Starline. Class Counsel's Fees and Costs Award shall be paid
6 out of the Gross Settlement Amount. Provided Class Counsel complies with the limitations set
7 forth in this Section 8.4, Defendant agrees not to oppose Class Counsel's application. An order
8 that reduces the Class Counsel Fees and Costs Award shall not be considered a material change
9 for purposes of Section 7.1 and 7.3 and any amount awarded for attorneys' fees and costs to Class
10 Counsel less than Fifteen Thousand and Eight Hundred Dollars (\$15,800) and Five Thousand
11 Dollars (\$5,000), respectively, will revert to the Net Settlement Amount for distribution to
12 Participating Settlement Class Members. Class Counsel shall be paid any Court-approved fees
13 and costs (not to exceed \$15,800 in fees and \$5,000 in costs), no later than twenty (20) calendar
14 days after the Effective Date. Class Counsel further agrees that Class Counsel shall be solely
15 responsible for any allocation of the Class Counsel Fees and Costs Award between or amongst
16 themselves or any other attorneys who have claims for such fees. Class Counsel shall be solely
17 and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph.
18 IRS Forms 1099 shall be provided to Class Counsel for the payments made pursuant to this
19 paragraph by the Settlement Administrator.

20 **8.5 Payment To The LWDA.** Provided the Effective Date has occurred, within
21 twenty (20) calendar days after Defendant delivers the balance of the Gross Settlement Amount to
22 the Settlement Administrator, the Settlement Administrator shall pay 75% of the PAGA
23 Allocation, or Two Thousand Two Hundred and Fifty Dollars (\$2,250), to the LWDA from the
24 Gross Settlement Amount. This payment shall constitute full satisfaction of the obligation to pay
25 civil penalties to the LWDA pursuant to Labor Code Section 2699(i).

26 **8.6 Payments To Participating Settlement Class Members.** As soon as reasonably
27 practicable after the Effective Date, given the need to calculate and deduct the various payments
28

1 noted, including the Class Counsel Fee and Costs Award, the Settlement Administration Costs,
2 and the Employment Taxes, the Settlement Administrator shall distribute to each Participating
3 Settlement Class Member a check in the amount equal to the total cash payment such member is
4 entitled to receive under this Agreement, less deductions for employment taxes. Each Settlement
5 Class Member's check will include the following language, or words to that effect, immediately
6 above the endorsement signature line:

7 I understand and acknowledge that, in addition to the release of claims to which I
8 am already subject in *Harp v. Starline Tours*, Case No. 2:14-cv-07704-CAS-E, by
9 cashing or depositing this check I am hereby opting into the Settlement in this case
10 for purposes of the Fair Labor Standard Act (FLSA) and releasing FLSA claims as
described in the Notice of Proposed Class Action Settlement and Final Approval
Hearing.

11 **8.7 Uncashed Checks.** Any checks paid to Participating Settlement Class Members
12 shall remain valid and negotiable for one hundred and eighty (180) calendar days from the date of
13 their issuance and shall thereafter automatically be cancelled. Any such unclaimed checks will be
14 used to recoup any unanticipated, additional Settlement Administration Costs, if any. If any funds
15 remain thereafter, they shall be donated to California Rural Legal Assistance, Inc. Any
16 Participating Settlement Class Member who does not cash or deposit their check after one hundred
17 and eighty (180) calendar days from the date of issuance shall not release their FLSA Settled
18 Claims, but shall be deemed to have to have released all Non-FLSA Settled Claims pursuant to the
19 terms of this Agreement..

20 **8.8 Final Accounting.** Within ninety (90) calendar days of (i) the date this settlement
21 is terminated or (ii) the distribution of all payments from the Qualified Settlement Fund as set
22 forth in this Agreement, the Settlement Administrator shall submit to the Parties a final accounting
23 of all monies paid into and out of the Qualified Settlement Fund.

24 **9. NOTICE AND CALCULATION OF SETTLEMENT PAYMENTS**

25 **9.1 Notice Of Settlement.** Notice of this settlement shall be given to Settlement Class
26 Members as follows:

- 27 a. Within twenty (20) calendar days of Preliminary Approval, or as soon as
28

1 practicable if the Parties need to obtain records from Starline's payroll processor, Defendant shall
2 submit the Settlement Class List to the Settlement Administrator. The time to submit the
3 Settlement Class List may be extended by mutual consent of the Parties.

4 b. The Settlement Administrator shall use its best efforts to run a national change
5 of address update and send by first class mail to each Settlement Class Member on the Settlement
6 Class List a copy of the Notice. This Notice shall be issued as soon as reasonably practicable
7 given the deadlines and processes specified below.

8 c. Within ten (10) business days after receipt of the Settlement Class List from
9 Defendant, the Settlement Administrator shall send a report to counsel for the Parties showing the
10 total estimated settlement payment to each Participating Settlement Class Member calculated
11 according to Section 9.2 below (and assuming no challenges to the Weeks Worked calculations).
12 Neither this report nor any other document provided to Class Counsel shall include any identifying
13 information for members of the Settlement Class, unless and until Class Counsel have been finally
14 appointed counsel for the Settlement Class and the settlement has achieved the Effective Date.
15 This estimated payment shall be disclosed in the Notice.

16 **9.2 Calculation of Settlement Payments.** Participating Settlement Class Members
17 will receive settlement payments calculated as follows:

18 a. The Settlement Administrator will determine the portion of Weeks Worked on
19 the TMZ Hollywood Tour by each Settlement Class Member relative to the total of all Weeks
20 Worked by Settlement Class Members in the aggregate on the TMZ Hollywood Tour during the
21 Class Period based on the Settlement Class List, which shall be presumed to be correct (for each
22 Settlement Class Member, the "Weeks Worked Percentage Value"). If a Settlement Class
23 Member disagrees with his/her Weeks Worked, which shall be set forth in the Notice, he or she
24 may challenge the Weeks Worked in the manner set forth herein.

25 b. Each Participating Settlement Class Member will receive a check equal to their
26 Weeks Worked Percentage Value (as finally determined by the Settlement Claims Administrator
27 following any challenges) multiplied by the Net Settlement Amount.

1 c. Sixty Percent (60%) of each Settlement Class Member's settlement payment
2 shall be considered wages ("Wage Component"), and Forty Percent (40%) shall be considered
3 interest and penalties ("Non-Wage Component").

4 d. The Wage Component of each Settlement Class Member's settlement payment
5 will be reduced by their portion of Employment Taxes, including payroll deductions for state and
6 federal withholding taxes, and any other applicable payroll deductions. The Settlement
7 Administrator will issue an IRS Form W-2 for the Wage Component.

8 e. No withholdings shall be made on the Non-Wage Component of Settlement
9 Class Members' settlement payments. The Settlement Administrator will issue an IRS Form 1099
10 for the Non-Wage Component.

11 **9.3 Maintenance Of Records.** The Settlement Administrator shall maintain complete,
12 accurate, and detailed records regarding administration of the settlement, including but not limited
13 to: any objection to proposed benefits and the resolution thereof; and any and all receipts by and
14 disbursements from the Qualified Settlement Fund. Upon reasonable request, the Settlement
15 Administrator shall provide such records in electronic format to counsel for the Parties. Any such
16 records provided to Class Counsel shall exclude any identifying information for members of the
17 Settlement Class, unless and until Class Counsel have been finally appointed counsel for the
18 Settlement Class and the settlement has achieved its Effective Date. The Settlement Administrator
19 shall prepare and provide to counsel for the Parties quarterly accountings showing all receipts by
20 and disbursements from the Qualified Settlement Fund. The Settlement Administrator shall
21 maintain all records for a period of not less than four years following the expiration of the
22 Effective Date.

23 **10. RELEASE AND DISMISSAL**

24 **10.1 Release.**

25 **10.1.1 Non-FLSA Release.** As of the Effective Date, in exchange for the
26 terms and conditions of this Agreement, the Settlement Class Representative, Participating
27 Settlement Class Members, and each of their heirs, successors, assigns, representatives,
28

1 and agents fully and forever release all Persons, including but not limited to the Released
2 Parties, of and from all Non-FLSA Settled Claims. Settlement Class Representative and
3 Participating Settlement Class Members may hereafter discover facts in addition to or
4 different from those they now know or believe to be true with respect to the subject matter
5 of the Non-FLSA Settled Claims but, upon the Effective Date, shall be deemed to have,
6 and by operation of the Final Approval Order and final judgment shall have, fully, finally,
7 and forever settled and released any and all of the Non-FLSA Settled Claims as to all
8 Persons, including but not limited to the Released Parties.

9 **10.1.2 FLSA Release.** As of the Effective Date (or upon the date their
10 check is cashed, deposited, or negotiated, whichever is later), and in exchange for the terms
11 and conditions of this Agreement, the Settlement Class Representative and all Participating
12 Settlement Class Members who cash, deposit or otherwise negotiate their checks within
13 180 days of issuance pursuant to this Settlement, shall be deemed to have opted into this
14 Settlement for purposes of the FLSA and shall be deemed to have, on behalf of themselves
15 and each of their heirs, successors, assigns, representatives, and agents, fully and forever
16 released all Persons, including but not limited to the Released Parties, of and from all
17 FLSA Settled Claims. Settlement Class Representative and Participating Settlement Class
18 Members may hereafter discover facts in addition to or different from those they now
19 know or believe to be true with respect to the subject matter of the FLSA Settled Claims
20 but, upon such date, shall be deemed to have, and by operation of the Final Approval Order
21 and final judgment shall have, fully, finally, and forever settled and released any and all of
22 the FLSA Settled Claims as to all Persons, including but not limited to the Released
23 Parties.

24 **10.2 Dismissal of Related Claims as to EHM Productions Inc. and TMZ**
25 **Productions Inc.** Within five (5) business days of the Effective Date, Class Counsel acting on
26 behalf of the appropriate Participating Settlement Class Members shall take all steps required to
27 cause Defendant and, if applicable, TMZ Productions Inc., to be dismissed with prejudice from the
28

1 State Harp Action. This dismissal and release do not apply to Starline Tours of Hollywood, Inc.
2 or any other Starline entity as to claims arising from the provision of bus driving services or duties
3 in connection with any tours or operations other than the TMZ Hollywood Tour.

4 **11. MISCELLANEOUS**

5 **11.1 Publicity.** Neither the Settlement Class Representative nor Class Counsel shall
6 issue any press release related in any way to the settlement. The Settlement Class Representative
7 and Class Counsel agree that, prior to Preliminary Approval of the Settlement Agreement, they
8 will keep the terms of this settlement confidential except for purposes of communicating with the
9 Settlement Class Representative and the Court. Nothing in this paragraph is intended to interfere
10 with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel,
11 including but not limited to answering questions from Settlement Class Members, or to interfere
12 with Class Counsel's practice of posting the Class Notice on their website.

13 **11.2 Tax Liability.** The Parties make no representations as to the tax treatment or legal
14 effect of the payments called for hereunder, and the Settlement Class Representative and
15 Participating Settlement Class Members are not relying on any statement or representation by the
16 Parties in this regard. The Settlement Class Representative and Participating Settlement Class
17 Members understand and agree that they will be responsible for the payment of any employee
18 taxes and penalties assessed on the payments described herein. Any refund of employee taxes
19 from uncashed settlement payments to Settlement Class Members shall be treated as uncashed
20 individual settlement payments and will be treated as specified in Section 8.7.

21 **11.3 Liens.** The Released Parties shall have no obligation to pay or otherwise resolve
22 any liens that are or may be asserted against settlement payments to Settlement Class Members
23 pursuant to the terms of this Agreement. In the event any such lien is asserted, it is the
24 responsibility of such Settlement Class Member to pay, compromise, or otherwise resolve the lien
25 at no cost to Defendant, the Released Parties, or the Qualified Settlement Fund.

26 **11.4 Entire Agreement.** This Agreement supersedes and replaces any and all other
27 prior agreements and all negotiations leading up to the execution of this Agreement, whether oral
28

1 or in writing, between the Parties with respect to the subject matter hereof. The Parties
2 acknowledge that no representations, inducements, promises, or statements, oral or otherwise,
3 have been made or relied upon by any of the Parties or by anyone acting on behalf of the Parties
4 which are not embodied or incorporated by reference herein, and further agree that no other
5 covenant, representation, inducement, promise or statement not set forth in writing in this
6 Agreement shall be valid or binding.

7 **11.5 Modification Or Amendment.** This Agreement may not be modified or amended,
8 except in writing with the unanimous consent of the Parties and, if appropriate, with the approval
9 of the Court.

10 **11.6 Execution In Counterparts.** This Agreement may be executed by signature of the
11 Parties hereto, or their authorized representatives, on multiple copies of this Agreement, including
12 copies transmitted by facsimile or pdf, and, upon being so executed by all Parties hereto, shall be
13 effective as if all signatures appeared on the original of this Agreement.

14 **11.7 Authority Of Counsel.** Class Counsel are authorized by the Settlement Class, and
15 by the Court, to take all appropriate action required and permitted to be taken by the Settlement
16 Class pursuant to this Agreement to effectuate its terms, and, subject to Court approval, are
17 authorized to enter into any modification or amendments to this Agreement on behalf of the
18 Settlement Class which they deem appropriate.

19 **11.8 Headings.** The headings of the sections, paragraphs, subparagraphs, and exhibits
20 of this Agreement are included for convenience only and shall not be deemed to constitute part of
21 this Agreement or to affect its construction.

22 **11.9 Further Acts.** The Parties shall perform such further acts and execute such further
23 documents as may be reasonably necessary or appropriate to effectuate the terms and purposes of
24 this Agreement.

25 **11.10 Beneficiaries.** This Agreement shall be binding upon the Parties and each of them,
26 and each of their respective heirs, successors, and assignees, and shall inure to the benefit of the
27

1 Parties, as well as to each of the Released Parties and their respective affiliates, heirs, successors,
2 and assignees, each of whom shall be deemed a third party beneficiary of this Agreement.

3 11.11 Choice Of Law. This Agreement in all respects shall be interpreted, enforced, and
4 governed by and under the laws of the State of California applicable to instruments, persons, and
5 transactions which have legal contacts and relationships solely within the state of California.

6 11.12 Warranty Regarding Advice. Class Counsel warrants that the Settlement Class
7 Representative has been fully advised of and agrees to the terms of this Agreement. The
8 Settlement Class Representative hereby acknowledges that he has been represented by legal
9 counsel throughout all negotiations which preceded the execution of this Agreement, and that this
10 Agreement has been executed with the consent and on the advice of said counsel.

11
12 AGREED TO AND ACCEPTED.

13 WILLIAM BROCKMAN

14
15 Dated: 8-10-2017

16 
17 Settlement Class Representative

18 EHM PRODUCTIONS INC.

19 Dated: 9-5-2017

20 By: 

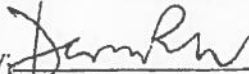
21 Its: Head of Legal Affairs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM.

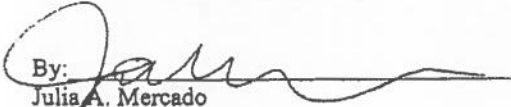
THE LAW OFFICES OF DENNIS P. WILSON

Dated: 8-12-17

By: 
Dennis P. Wilson
Class Counsel

APARICIO-MERCADO LAW, L.C.

Dated: 8/12/17

By: 
Julia A. Mercado
Class Counsel

MITCHELL SILBERBERG & KNUPP LLP

Dated: _____

By: _____
Seth Pierce
Attorneys for Defendant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM.

THE LAW OFFICES OF DENNIS P. WILSON

Dated: _____

By: _____
Dennis P. Wilson
Class Counsel

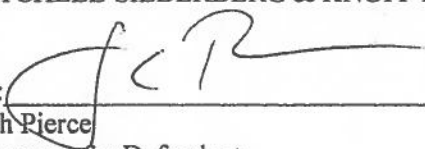
APARICIO-MERCADO LAW, L.C.

Dated: _____

By: _____
Julia A. Mercado
Class Counsel

MITCHELL SILBERBERG & KNUPP LLP

Dated: 9/11/17

By:  _____
Seth Pierce
Attorneys for Defendant