

## SECOND REVISED SETTLEMENT AGREEMENT

This Settlement Agreement is made by Plaintiffs Juan Barco ("Barco"), Julio Xolalpa ("Xolalpa") and Daniel Cardona ("Cardona") (hereinafter collectively referred to as "Plaintiffs"), individually and on behalf all Class Members and Aggrieved Employees (as hereinafter defined) on the one hand, and Defendants Kellytoy (USA), Inc., Jonathan Kelly, and Kellytoy Worldwide, Inc. (hereinafter collectively referred to as "Defendants") on the other hand. This Settlement Agreement is subject to the approval of the Court.

### **I. NATURE OF THE CASE AND THE PARTIES' SETTLEMENT**

1. The Parties and Class Counsel. Plaintiffs and Defendants are collectively referred to as "the Parties." "Class Counsel" refers to Sirmabekian Law Firm, PC, Srourian Law Firm, P.C., and The Nourmand Law Firm, APC.

2. The Class Action. On March 27, 2020, Barco and Xolalpa filed a class action in Los Angeles Superior Court against Defendants Kellytoy (USA), Inc., Jonathan Kelly, and Hannah Kelly, Case No. 20STCV12539. The operative complaint ("Complaint #1") alleges claims against Defendants Kellytoy (USA), Inc., Jonathan Kelly, and Hannah Kelly by Plaintiffs Barco and Xolalpa on behalf of themselves, and all persons who have either been, or currently are, employed by Defendants Kellytoy (USA), Inc. in California as non-exempt employees ("Class") during the period of March 27, 2016 to the present.

On June 5, 2020, Cardona filed a class action in Los Angeles Superior Court against Defendant Kellytoy Worldwide, Inc., Case No. 20STCV21917. The operative complaint ("Complaint #2") alleges claims against Defendant Kellytoy Worldwide, Inc. by Plaintiff Cardona on behalf of himself, and all persons who have either been, or currently are, employed by Defendant Kellytoy Worldwide, Inc. in California as non-exempt employees ("Class") during the period of June 5, 2016 to the present.

3. Plaintiffs' Contentions. As alleged in the Complaint #1, Plaintiffs Barco and Xolalpa contend that Defendants Kellytoy (USA), Inc., Jonathan Kelly, and Hannah Kelly violated various provisions of the Labor Code by its alleged for: (1) Failure to Pay Minimum Wage (Cal.

Lab. Code §§ 1182.12, 1194, 1197 & 1198, et seq.); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 1198 & 510, et seq.); (3) Failure to Pay Meal Period Compensation (Cal. Lab. Code §§ 226.7, 512(a) & 1198 et seq.); (4) Failure to Pay Rest Period Compensation (Cal. Lab. Code §§ 226.7 & 1198 et seq.); (5) Failure to Furnish Accurate Wage and Hour Statements (Cal. Lab. Code § 226); (6) Failure to Pay Wages Upon Discharge (Cal. Lab. Code §§ 201 & 202, et seq.); (7) Violation of the Private Attorneys General Act of 2004 (California Labor Code §2698, et seq.); and (8) Unfair Competition (Business and Professions Code § 17200 et seq.).

As alleged in the Complaint #2, Plaintiff Cardona contends that Defendant Kellytoy Worldwide, Inc. violated various provisions of the Labor Code by its alleged for: (1) Failure To Pay Overtime Wages; (2) Failure To Pay Minimum Wage; (3) Failure To Provide Meal Periods; (4) Failure To Provide Rest Periods; (5) Failure To Pay All Wages Upon Termination; (6) Failure To Provide Accurate Wage Statements; and (7) Unfair Competition.

The cases were related and Complaint #1 is the lead case. Hannah Kelly was dismissed. Hereinafter, Complaint #1 and Complaint #2 are collectively referred to as "the Lawsuit," and Plaintiffs Barco, Xolalpa and Cardona are collectively referred to as "Plaintiffs."

Plaintiffs believe they filed a meritorious action, and that the requirements for class certification can be satisfied.

4. Defendants' Contentions. Defendants deny any liability or wrongdoing as alleged by Plaintiffs. Defendants contend that they correctly compensated Class Members and Aggrieved Employees for all compensable work hours at the appropriate regular and premium rates; provided Class Members with proper meal and rest periods or paid required premiums for missed, late, short, or non-compliant breaks; provided Class Members and Aggrieved Employees with compliant wage statements and maintained requisite payroll records; timely paid Class Members and Aggrieved Employees all wages owing during their employment and at the time of termination; and reimbursed Class Members and Aggrieved Employees for all business expenses. Defendants further contend that for any purpose other than settlement, this action is not appropriate for class treatment.

5. The Mediation. The Parties participated in a mediation on August 23, 2021 with Steve Serratore, Esq. Prior to and during the mediation, the Parties informally exchanged voluminous information, including production of time and pay records for a random sample of Class Members and Aggrieved Employees, policies, paystub exemplars, and class and PAGA information. At the conclusion of the mediation, a mediator’s proposal was made, and thereafter accepted by the Parties. This Settlement Agreement is a result of the Parties’ arms-length negotiations.

6. Investigation. Class Counsel has diligently investigated the facts and claims alleged in the Lawsuit, including a thorough analysis of voluminous documents, interviews of putative Class Members, and an analysis of the time and pay data informally produced by Defendants prior to and during the mediation. Based on their independent investigation and evaluation, Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risks of significant delay, denial of a motion for class certification or decertification, the defenses asserted by Defendants, and potential appellate issues.

7. The Settlement Class. Class Members who do not timely opt out of the Settlement are referred to as “Settlement Class Members.” The Class is defined as: “All current and former non-exempt employees who worked for Defendants within California at any time during the period from March 27, 2016 through preliminary approval or 90 days from August 26, 2021, whichever is earlier.”

8. Cooperation. The Parties agree to cooperate and take all steps necessary and appropriate to effectuate the terms of this Settlement Agreement.

## **II. TERMS OF SETTLEMENT**

9. Purpose of the Parties. The Parties agree that this action and any claims arising out of the Lawsuit be settled on the terms described herein as between the Class and Defendants, subject to the approval of the Court.

10. Settlement “Effective Date.” The settlement embodied in this Settlement Agreement shall become effective after all of the following events have occurred: (i) this Settlement Agreement has been executed by all Parties and by counsel for the Settlement Class and Defendants; (ii) the Court has given preliminary approval to the Settlement; (iii) notice has been given to the putative members of the Settlement Class, providing them with an opportunity to object to the terms of the Settlement or to opt out of the Settlement; (iv) the Court has held a formal fairness hearing and, having heard no objections to the Settlement, entered a final order and judgment certifying the Class and approving this Settlement Agreement; or (v) in the event there are written objections filed prior to the formal fairness hearing which are not later withdrawn or denied, the later of the following events: when the period for filing any appeal, writ or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or any appeal, writ or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or any appeal, writ or other appellate proceeding has upheld the Court’s final order with no right to pursue further remedies or relief. In this regard, it is the intention of the parties that the Settlement shall not become effective until the Court’s order approving the Settlement is completely final.

11. Gross Settlement Fund. In consideration for the release of the claims of the Settlement Class against Defendants, Defendants agree to create a “Gross Settlement Fund” of Four Hundred Ten Thousand Dollars and 00/100 Cents (\$410,000.00) to be paid by Defendants, as a full and complete settlement of all claims that were or could have been asserted based on the facts alleged in the Lawsuit. This Gross Settlement Fund constitutes a common fund for the payment of all claims hereunder, attorney’s fees and litigation costs to Class Counsel, settlement administration costs, the Class Representative's Enhancement Award, and the amount allocated to Private Attorneys General Act ("PAGA"). The Gross Settlement Fund does not include Defendants' share of the employer-side payroll taxes on the amount of the Settlement allocated to wages. The Settlement is non-reversionary, and the entire Gross Settlement Fund will be paid by

Defendants. Defendants will receive a \$35,000 credit in consideration for “Pick Up Stix” payments made by them prior to the mediation of this matter on August 23, 2021, such that Defendants will only be responsible for paying \$375,000 in new money (in addition to employer-side payroll taxes) in accordance with the terms of this settlement agreement.

12. True-Up Payments. The Parties agree that prior to distribution of net settlement funds to Settlement Class members who have not opted out or objected, payments of \$8.57 per workweek worked during the Class Period, deducted from the GSA, shall first be made to the Settlement Class members who did not sign a “Pick-Up Stix” release and/or accept a “Pick-Up Stix” payment from Defendants while litigation was pending (“True-Up Payments”). True-Up Payments are contemplated to assure equal treatment of all class members.

13. Net Settlement Fund. The “Net Settlement Fund” is the balance of the Gross Settlement Fund after payments have been made for Court-approved attorney’s fees and litigation costs to Class Counsel, the Class Representative’s Enhancement Award, costs of settlement administration, the amount allocated to PAGA, and True-Up Payments to class members who did not accept a Pick Up Stix payments from Defendants.

14. Payments to Settlement Class Members from Net Settlement Fund. The Net Settlement Fund will be paid to Settlement Class Members as follows. To determine a Settlement Class Member’s payment, the Net Settlement Fund will be divided by the total number of weeks worked by all Settlement Class Members as non-exempt employees in California during the Class Period (“Workweeks”), multiplied by the number of Workweeks worked by that Settlement Class Member. Workweeks will be calculated by Defendants based on time and pay records. Any calendar week that a Class Member worked at least one day will be considered a Workweek.

15. Attorneys’ Costs. Class Counsel will apply to the Court for, and Defendants will not oppose, payment of Class Counsel’s litigation costs from the Gross Settlement Fund, in an amount up to Twenty Five Thousand Dollars and 00/100 Cents (\$25,000.00). Attorneys’ Costs shall include, but are not limited to, all costs and expenses incurred by Plaintiffs in the prosecution of this action, such as filing fees, expert fees, and mediation fees. If the Court approves less than

the amount requested by Class Counsel, the difference between the requested and awarded amounts will be included in the Net Settlement Fund and distributed *pro rata* to the Settlement Class Members as set forth in Paragraph 13.

16. Attorneys' Fees. Class Counsel will apply to the Court for, and Defendants will not oppose, payment of attorneys' fees from the Gross Settlement Fund in an amount up to One Hundred Thirty Six Thousand Six Hundred Sixty Six Dollars and 00/100 Cents (\$136,666.00) i.e., one third (33.333%) of the Gross Settlement Fund. If the Court approves less than the amount requested by Class Counsel, the difference between the requested and awarded amounts will be included in the Net Settlement Fund and distributed *pro rata* to the Settlement Class Members as set forth in Paragraph 13.<sup>1</sup>

17. Enhancement Award. Class Counsel will apply to the Court for, and Defendants will not oppose, payment from the Gross Settlement Fund of up to Five Thousand Dollars and 00/100 Cents (\$5,000.00) to Barco, Xolalpa and Cardona each for their service as Class Representatives ("Enhancement Award"). This amount shall be paid in addition to the Plaintiff's *pro rata* share of the Net Settlement Fund as set forth in Paragraph 13. If the Court approves less than the amount requested by Class Counsel, the difference between the requested and awarded amounts will be included in the Net Settlement Fund and distributed *pro rata* to the Settlement Class Members as set forth in Paragraph 13.

18. Settlement Administration Costs. The reasonable costs of settlement administration through and beyond final approval, are estimated to be no greater than Twenty Five Thousand Dollars and 00/100 Cents (\$25,000.00), and shall be paid from the Gross Settlement Fund. If the Settlement Administrator's fees and costs are less than that amount, the difference will be included in the Net Settlement Fund and distributed *pro rata* to the remaining Settlement Class Members

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<sup>1</sup> The Parties agreed that because the 35 individual settlements were only entered into after litigation commenced, the amounts paid thereunder are rightfully to be considered part of the Gross Settlement Amount. Defendants do not dispute that the lawsuit was a catalyst for the Pick Up Stix Payments. Additionally, including the \$35,000 as part of the Gross Settlement Amount is reasonable if/when considering that Plaintiffs' counsel was successful at trial, the amounts paid would likely be subject to an offset as a matter of law.

as set forth in Paragraph 13. If the Settlement Administrator's fees and costs are more than that amount, the additional fees and costs will be paid from the Gross Settlement Fund.

19. PAGA Payment. The sum of Ten Thousand Dollars (\$10,000) from the Gross Settlement Fund is allocated to alleged penalties pursuant to PAGA. Of this amount, seventy-five percent (75%) or Seventy Five Hundred Dollars (\$7500 shall be payable to the California Labor and Workforce Development Agency ("LWDA"). The remainder shall be paid to those Class Members who were employed by Defendants as non-exempt employees in California during the period from March 27, 2019 through preliminary approval or 90 days from August 26, 2021, whichever is earlier ("PAGA Period") ("Aggrieved Employees"). To determine an Aggrieved Employees' PAGA payment, the 25% of the amount allocated to PAGA will be divided by the total number of pay periods worked by all Aggrieved Employees as non-exempt employees in California during the PAGA Period ("PAGA Workweeks"), multiplied by the number of PAGA pay periods worked by that Aggrieved Employee. Pay periods will be calculated by Defendants based on payroll records.

The amount payable to Aggrieved Employees as set forth in this Paragraph will be paid to all Aggrieved Employees employed during the PAGA Period, including those that may opt out of the Class Action Settlement. Any Aggrieved Employee who receives a payment pursuant to this Paragraph and who opts out of the Class Action Settlement is bound by the release set forth in Paragraph 29.

20. Taxes. The Settlement Administrator will make appropriate wage deductions and report payments on IRS Forms W-2 and 1099 as appropriate. The settlement payments to Settlement Class Members will be allocated as follows: ten percent (10%) to wages, forty-five percent (45%) to penalties, and forty-five percent (45%) to interest. No taxes will be withheld from the Class Member's share of the PAGA penalties. The employee and employer portion of payroll taxes will be based on the wage portion only. The employee's portion of payroll taxes shall be paid from the individual settlement payments to Settlement Class Members. The employer's portion of payroll taxes will be paid by Defendants in addition to the Gross Settlement

Amount. Settlement Class Members will be responsible for any other taxes associated with their settlement payments. The Parties agree that it is the obligation of the Settlement Class Members to pay appropriate federal, state, and local income taxes on all payments they receive under this Settlement Agreement. Neither Class Counsel nor Defendants' Counsel intend anything contained in this Settlement to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall anything in this Settlement be relied upon as such.

Circular 230 Disclaimer: Each Party to this Agreement acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR part 10, as amended); (2) each Party (a) has relied exclusively upon his, her or its own independent legal and tax counsel for advice (including tax advice) in connection with this Agreement; (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party; and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other Party to avoid any tax penalty that may be imposed; and (3) no attorney or adviser to any Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by any other Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

### **III. SETTLEMENT ADMINISTRATOR**

21. Appointment. The Parties have agreed to the appointment of Phoenix Administration to perform the duties of Settlement Administrator for the purpose of providing notice, status reports, resolving disputes regarding the number of Workweeks allocated to Class Members, issuing and mailing settlement checks, W-2's and 1099's, and reporting the payments to the appropriate taxing agencies. Within thirty (30) calendar days from the mailing of the final settlement payments to Settlement Class Members and eligible Class Members, the Settlement



Administrator shall prepare a declaration for the Court certifying that all settlement payments have been made. The Settlement Administrator shall provide such other reports as requested by counsel for the Parties or the Court, including any required declarations in support of preliminary and final approval of the Settlement. The Settlement Administrator has extensive experience administering these types of settlements including years of successful class action case management. Phoenix Class Action Administration Solutions has developed a seamless process to maintain superior case continuity to ensure clients receive timely final approval. Further, the Settlement Administrator maintains procedures to protect the security of class data and carries adequate insurance should there be a data breach or defalcation of funds.

22. Resolution of Disputes. All disputes relating to the Settlement Administrator's duties may be referred to the Court, if necessary, which will have continuing jurisdiction over this Settlement Agreement until all obligations contemplated by the Settlement Agreement have been fully carried out.

#### **IV. NOTICE TO THE SETTLEMENT CLASS**

23. Notice of Settlement. The Notice of Class Action Settlement ("Notice") as approved by the Court, shall be mailed by the Settlement Administrator by First Class U.S. Mail, in English and Spanish, to the last known address of each Class Member. Within fourteen (14) calendar days of the Court's Order granting Plaintiff's Motion for Preliminary Approval, Defendants shall provide to the Settlement Administrator the names, last known address, last known telephone number, social security number, date of hire and date of termination (if applicable), number of workweeks of Class Members, and number of pay periods (as set forth in Paragraphs 13 and 18) (collectively referred to as "Class List and Information"). Within ten (10) calendar days of receipt of the Class List and Information for the Class, the Settlement Administrator will complete the mailing of the Notice to all Class Members. Prior to mailing the Notice, the Settlement Administrator shall perform a National Change of Address search on the entire list of Class Members to obtain updated mailing addresses. In total, the Notice contains ten (10) pages.

24. Request for Exclusion. Class Members shall have thirty (30) calendar days from the initial mailing of the Notice (“Response Deadline”) to mail a signed, completed request to be excluded from the Settlement (“Request for Exclusion”) to the Settlement Administrator. The Request for Exclusion from the Settlement must include the Class Member’s full name, address, and telephone number, the name and case number of the Action, and shall be signed by the Class Member. The Request for Exclusion should state, in effect, the following: “I WISH TO BE EXCLUDED FROM THE SETTLEMENT IN THE CLASS ACTION LAWSUIT. I UNDERSTAND BY REQUESTING EXCLUSION FROM THE SETTLEMENT, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE LAWSUIT” or otherwise provide a clear a statement that the Class Member wishes to be excluded from the Settlement. Unsigned Requests For Exclusion, those that do not comply with the requirements listed herein, or those postmarked after the Response Deadline will not be honored unless mutually agreed to by counsel for all Parties or ordered by the Court. The Settlement Administrator will provide counsel for the Parties with copies of any completed Requests for Exclusion. Neither the Parties nor their counsel will solicit or encourage Class Members to request to be excluded from the Settlement. Any Class Member who requests to be excluded from the Settlement (“Non-Participating Class Member”) will not be entitled to any recovery under the Settlement other than a *pro rata* portion of the amount allocated to PAGA as set forth in Paragraph 18 if eligible, and will not be bound by the terms of the Settlement except the Release set forth in paragraph 29, or have any right to object, appeal or comment thereon. Class Members who fail to submit a valid and timely Request for Exclusion (“Participating Class Member”) shall be bound by all terms of the Settlement and any Final Judgment entered in this Action. The Settlement Administrator shall provide the Parties with weekly updates regarding the status of any Requests for Exclusion.

25. Objections. The Notice shall provide that Settlement Class Members who object to the Settlement must submit to the Settlement Administrator either a written statement objecting to the Settlement or a written notice of intention to appear at the Final Approval hearing and object (“Objection”). Such Objection must be postmarked on or before the Response Deadline. The

Settlement Administrator will notify all Parties of any Objection within five (5) business days of receipt of the Objection. The Objection must be signed by the Settlement Class Member, reference the case name and case number 20STCV12539 and state all of the following: (1) the full name of the Class Member; (2) the dates of employment of the Class Member; (3) the grounds for the objection; (4) if the Class Member intends to appear at the final approval hearing; and (5) any legal briefs, papers, or memoranda the objecting Class Member proposes to submit to the Court. Class Members who fail to object in the manner specified above still have the right to appear in Court at the Final Approval Hearing to state his or her objections. If the Class Member does not submit an Objection or appear in Court to object at the Final Approval Hearing, the Class Member shall be deemed to have waived his or her right to object, and shall be foreclosed from making any objections to the Settlement whether by appeal or otherwise. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to object to the Settlement. The Settlement Administrator shall provide the Parties with weekly updates regarding the status of any Objections.

26. Disputes. The Notice shall inform Class Members of the number of workweeks and pay periods they worked as a non-exempt employee in California during the Class Period and PAGA Period based on Defendants' records. Class Members may dispute this information by providing the Settlement Administrator with additional information and documentation postmarked on or before the Response Deadline ("Dispute"). A Dispute must be signed by the Class Member, reference the case name and case number 20STCV12539, and state all of the following: (1) the full name of the Class Member; (2) the number of workweeks the Class Member contends is correct; and (3) attach any documentation support his or her contended number of workweeks. If there is a Dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. Any Disputes not resolved by the Settlement Administrator or the Parties will be resolved by the Court. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the Disputes without the necessity of involving the Court.

27. Settlement Processing. The date of the postmark on the return envelope shall be the exclusive means used to determine whether a Class Member has timely submitted a Dispute, Request for Exclusion, or Objection. Any Notice returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto within five (5) calendar days. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by use of skip-tracing, or other search using the name, address and/or Social Security number of the Class Member involved, and shall then perform a re-mailing, if another mailing address is identified by the Settlement Administrator. Class Members who receive a re-mailed Notice of Class Settlement shall have twenty (20) calendar days from the postmark date of the re-mailed Notice to object or opt-out. In the case of a re-mailed Notice, the Response Deadline will be extended by fifteen (15) calendar days.

28. Funding of Settlement. The Gross Settlement Fund and the employer's share of payroll taxes as set forth in Paragraph 11 will be made by Defendants to the Settlement Administrator by wire transfer within ten (10) calendar days after the Effective Date. Settlement payments shall be mailed by First Class U.S. Mail to Settlement Class Members and eligible Class Members' last known mailing address within fourteen (14) calendar days after Funding. Settlement checks which are uncashed after One Hundred Twenty (120) days of issuance of the check shall be tendered to the State Controller's Office, Unclaimed Property Division in the name of the Settlement Class Member and the amount of the check was cancelled.

**V. RELEASE**

29. **Release by Participating Class Members Who Are Not Aggrieved Employees.**

Upon the final approval by the Court of this Settlement Agreement, and except as to such rights or claims as may be created by this Settlement Agreement, and only after the settlement has been fully funded, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Defendants

KellyToy USA, Inc., Kellytoy Worldwide, Inc., Jonathan Kelly, Hannah Kelly, and all of their past, present, and future owners, officers, directors, agents, employees, attorneys, insurers, re-insurers, parent companies, subsidiaries, affiliated or related entities, shareholders, partners, agents, investors, representatives, and all of their respective successors and assigns (including, but not limited to, Kelly Toys Holdings, LLC, Kelly Amusement Holding, LLC, and Jazwares, LLC) (collectively “Released Parties”), from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action], including any state or federal claims relating to the failure to pay wages and overtime, failure to provide meal or rest breaks, failure to provide accurate and complete wage statements, failure to keep requisite payroll records, failure to timely pay employees during employment or at termination, failure to reimburse employees for business expenses, unfair competition, waiting time penalties, interest, attorney’s fees, or any other claim not presented in the operative complaint but are based on the facts alleged in the operative complaint (“Released Claims”). Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

**Release by Non-Participating Class Members Who are Aggrieved Employees.**

Upon the final approval by the Court of this Settlement Agreement, and except as to such rights or claims as may be created by this Settlement Agreement, and only after the settlement has been fully funded, all Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs,

administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Action, including, including any state or federal claims relating to the failure to pay wages and overtime, failure to provide meal or rest breaks, failure to provide accurate and complete wage statements, failure to keep requisite payroll records, failure to timely pay employees during employment or at termination, failure to reimburse employees for business expenses, unfair competition, waiting time penalties, interest, attorney's fees, or any other claim not presented in the operative complaint but are based on the facts alleged in the operative complaint.

30. Individual Release by Plaintiffs. In addition to the releases made by the Settlement Class Members, and only after the settlement has been fully funded, Plaintiffs make the additional general release of all claims, known or unknown, in exchange and consideration of the Enhancement Award described in Paragraph 16. Plaintiffs agree to a general release of the Released Parties from all claims, demands, rights, liabilities, actions, grievances, demands for arbitration, and causes of action of every nature and description whatsoever, known or unknown, pending or threatened, asserted or that might have been asserted, whether brought in tort or in contract, whether under state or federal or local law during the Class Period. Except as otherwise specifically provided under this Settlement Agreement, Plaintiffs expressly waive and relinquish all rights and benefits afforded by § 1542 of the Civil Code of the State of California, which states: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

31. Plaintiffs do not release any claim which cannot be released by private agreement, such as unemployment compensation claims, workers' compensation claims, claims of entitlement

to vested benefits under any 401(k) plan or other ERISA-covered benefit plan provided by Defendants, or claims after the Effective Date of this Agreement.

**VI. JUDICIAL APPROVALS**

32. Duties of Parties Prior to Preliminary Approval. The Parties shall submit this Settlement Agreement to the Superior Court for the County of Los Angeles in support of Plaintiffs' Motion for Preliminary Approval. As soon as practicable after execution of this Settlement Agreement, Plaintiffs shall apply to the Court for a Preliminary Approval Order for the purpose of:

- (a) Scheduling a final approval hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable and adequate as to the members of the class;
- (b) Approving Sirmabekian Law Firm, PC, Srourian Law Firm, P.C., and The Nourmand Law Firm, APC to serve as Class Counsel and Juan Barco, Julio Xolalpa and Daniel Cardona to serve as Class Representatives;
- (c) Approving the form and content of the proposed Notice of Class Action Settlement (**Exhibit 1**);
- (d) Approving Phoenix Administration as the Settlement Administrator;
- (e) Directing the distribution of the Notice of Class Action Settlement;
- (f) Preliminarily approving the Settlement; and
- (g) Provisionally certifying the Class for purposes of Settlement.

33. Duties of Parties Following Preliminary Approval. Plaintiffs shall file a Motion for Final Approval of the Settlement following the completion of the Notice and opt out process, and will submit a Proposed Final Approval Order and Judgment for review by the Court at the Final Approval hearing for the purpose of:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions; and
- (b) Filing a motion for attorney's fees and litigation costs as set forth herein.

- (c) Entering a Judgment which permanently bars all Class Members who have not timely opted out of the Settlement from prosecuting any released claims against Defendants and Released Parties.

34. Voiding Settlement. Defendants have the option to void this Settlement Agreement within thirty (30) calendar days of receiving notice from the Settlement Administrator that more than five percent (5%) of the Class Members have timely completed valid Requests for Exclusion.

35. Escalator Clause. At the time of mediation, Defendants represented, and settlement was effectuated on the basis that there were 9,749 workweeks during the Recovery Period for which claims were settled. If as of the date of preliminary approval, the number of workweeks during the Recovery Period for which claims were settled increases by more than Ten Percent (10%), then there shall be a pro rata adjustment to the Gross Settlement Amount, which shall automatically increase in proportion to the increased percentage of workweeks. For example, if such increase in workweeks during the Settlement Period is 15% at the time of preliminary approval, the Gross Settlement Amount shall correspondingly increase by 15%.

## **VII. MISCELLANEOUS PROVISIONS**

36. Voluntary Nature. The Parties acknowledge that they have entered into this Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress, or undue influence of any Party, and not in reliance on any promises, representations, or statements made by the other Parties other than those contained in this Settlement Agreement. Each of the Parties expressly waives any right to claim that this Settlement Agreement was in any way induced by fraud.

37. Informed Consent. Prior to execution of this Settlement Agreement, each Party has read this entire Settlement Agreement and been given the opportunity to consult with independent counsel of their choosing and to have such independent counsel advise as to the meaning of this Agreement and its legal effect.

38. Authority. The signatories hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.



39. Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties shall use their reasonable best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein.

40. No Admissions. Nothing contained herein is to be construed or deemed an admission of liability by Defendants. Each Party hereto has entered into this Settlement Agreement with the intention to avoid further disputes and the expense and inconvenience of litigation.

41. Enforcement. If a Party to this Settlement Agreement institutes any legal action, arbitration, or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights or obligations under this Settlement Agreement, then the prevailing Party shall recover from the unsuccessful Party, reasonable attorneys' fees and costs.

42. Employee Benefits. The amounts paid under this Settlement Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan or policy sponsored by Defendants or Released Parties. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, any benefit plans, policies or programs. Any payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently or on a going-forward basis as salary, earnings, wages or any other form of compensation for the purposes of any sponsored benefit plan, policy or bonus program, including, but not limited to, vacation, leave, and sick policies. Defendants and Released Parties retain the right to modify the language of any benefit plans, policies and programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are not for any measuring term as defined by applicable plans, policies, and programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

43. Construction. The Parties agree that this Settlement Agreement is the result of lengthy, intensive arms-length negotiations between the parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which that Party has participated in the drafting of this Settlement Agreement.

44. Captions and Interpretations. Paragraph titles or captions contained herein appear as a matter of convenience and for reference, and in no way define the scope of this Settlement Agreement or any provision hereof.

45. Modifications. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Counsel of the parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

46. Waiver. No waiver of any of the terms of this Settlement Agreement shall be valid unless in writing and signed by the party to this Settlement Agreement against whom such waiver is sought to be enforced. The waiver by any Party to any provision of this Settlement Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party, nor shall any waiver operate or be construed as a rescission of this Settlement Agreement.

47. Integration. This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

48. No Prior Assignments. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

49. Governing Law. This Settlement Agreement is made and entered into under the laws of the State of California, and shall be interpreted, applied and enforced under those laws, and any litigation concerning this Settlement Agreement shall be in the Superior Court of the County of Los Angeles.

50. Execution. This Settlement Agreement may be executed via facsimile or email, in multiple counterpart copies, each of which shall be deemed an original.

51. Signatories. The Parties agree that it is impossible or impractical to have each member of the Settlement Class execute this Settlement Agreement. The Notice of Class Action Settlement will advise all Class Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each Class Member.

IN WITNESS WHEREOF: the undersigned have duly executed this Agreement as of the date indicated below:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Juan Barco  
Plaintiff and Class Representative

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Julio Xolalpa  
Plaintiff and Class Representative

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Daniel Cardona  
Plaintiff and Class Representativ

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Defendant KellyToy USA, Inc.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Defendant Kellytoy Worldwide, Inc.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Defendant Jonathan Kelly

APPROVED AS TO FORM:

Dated:

By: \_\_\_\_\_  
Counsel for Plaintiff and Class  
Representative Juan Barco and Julio  
Xolalpa

Dated:

By: \_\_\_\_\_  
Counsel for Plaintiff and Class  
Representative Daniel Cardona

Dated:

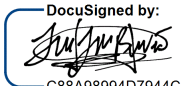
By: \_\_\_\_\_  
Counsel for Defendants KellyToy USA,  
Inc., Kellytoy Worldwide, Inc., and  
Jonathan Kelly

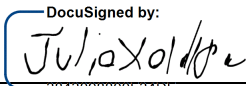
49. Governing Law. This Settlement Agreement is made and entered into under the laws of the State of California, and shall be interpreted, applied and enforced under those laws, and any litigation concerning this Settlement Agreement shall be in the Superior Court of the County of Los Angeles.

50. Execution. This Settlement Agreement may be executed via facsimile or email, in multiple counterpart copies, each of which shall be deemed an original.

51. Signatories. The Parties agree that it is impossible or impractical to have each member of the Settlement Class execute this Settlement Agreement. The Notice of Class Action Settlement will advise all Class Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each Class Member.

IN WITNESS WHEREOF: the undersigned have duly executed this Agreement as of the date indicated below:

Dated: 1/19/2023 By:   
C88A98994D7944C...  
Juan Barco  
Plaintiff and Class Representative

Dated: 1/18/2023 By:   
3843098800F34DE...  
Julio Xolalpa  
Plaintiff and Class Representative

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Daniel Cardona  
Plaintiff and Class Representativ

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Defendant KellyToy USA, Inc.

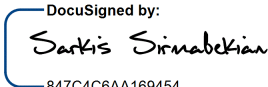
Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Defendant Kellytoy Worldwide, Inc.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Defendant Jonathan Kelly

APPROVED AS TO FORM:

Dated: 1/18/2023

By:   
847C4C6AA169454  
Counsel for Plaintiff and Class  
Representative Juan Barco and Julio  
Xolalpa

Dated:

By: \_\_\_\_\_  
Counsel for Plaintiff and Class  
Representative Daniel Cardona

Dated:

By: \_\_\_\_\_  
Counsel for Defendants KellyToy USA,  
Inc., Kellytoy Worldwide, Inc., and  
Jonathan Kelly

49. Governing Law. This Settlement Agreement is made and entered into under the laws of the State of California, and shall be interpreted, applied and enforced under those laws, and any litigation concerning this Settlement Agreement shall be in the Superior Court of the County of Los Angeles.

50. Execution. This Settlement Agreement may be executed via facsimile or email, in multiple counterpart copies, each of which shall be deemed an original.

51. Signatories. The Parties agree that it is impossible or impractical to have each member of the Settlement Class execute this Settlement Agreement. The Notice of Class Action Settlement will advise all Class Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each Class Member.

IN WITNESS WHEREOF: the undersigned have duly executed this Agreement as of the date indicated below:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Juan Barco  
Plaintiff and Class Representative

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Julio Xolalpa  
Plaintiff and Class Representative


Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Daniel Cardona  
Plaintiff and Class Representativ

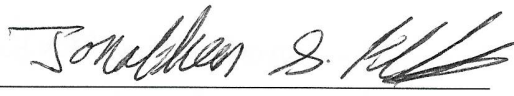
Dated: 1/22/23

By:   
Defendant KellyToy USA, Inc.

Dated: 1/22/23

By:   
Defendant Kellytoy Worldwide, Inc.

Dated: 1/22/23

By:   
Defendant Jonathan Kelly

APPROVED AS TO FORM:

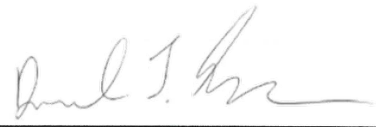
Dated:

By: \_\_\_\_\_  
Counsel for Plaintiff and Class  
Representative Juan Barco and Julio  
Xolalpa

Dated:

By: \_\_\_\_\_  
Counsel for Plaintiff and Class  
Representative Daniel Cardona

Dated: January 23, 2023

By:   
Counsel for Defendants KellyToy USA,  
Inc., Kellytoy Worldwide, Inc., and  
Jonathan Kelly



49. Governing Law. This Settlement Agreement is made and entered into under the laws of the State of California, and shall be interpreted, applied and enforced under those laws, and any litigation concerning this Settlement Agreement shall be in the Superior Court of the County of Los Angeles.

50. Execution. This Settlement Agreement may be executed via facsimile or email, in multiple counterpart copies, each of which shall be deemed an original.

51. Signatories. The Parties agree that it is impossible or impractical to have each member of the Settlement Class execute this Settlement Agreement. The Notice of Class Action Settlement will advise all Class Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each Class Member.

IN WITNESS WHEREOF: the undersigned have duly executed this Agreement as of the date indicated below:


Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Juan Barco  
Plaintiff and Class Representative

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Julio Xolalpa  
Plaintiff and Class Representative

Dated: 01/19/2023

By:   
\_\_\_\_\_  
Daniel Cardona  
Plaintiff and Class Representativ

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Defendant KellyToy USA, Inc.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Defendant Kellytoy Worldwide, Inc.

Dated: \_\_\_\_\_

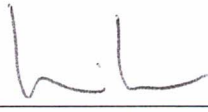
By: \_\_\_\_\_  
Defendant Jonathan Kelly

APPROVED AS TO FORM:

Dated:

By: \_\_\_\_\_  
Counsel for Plaintiff and Class  
Representative Juan Barco and Julio  
Xolalpa

Dated: 1/19/23

By:   
\_\_\_\_\_   
Counsel for Plaintiff and Class  
Representative Daniel Cardona

Dated:

By: \_\_\_\_\_  
Counsel for Defendants KellyToy USA,  
Inc., Kellytoy Worldwide, Inc., and  
Jonathan Kelly

# EXHIBIT 1

## INFORMATION SHEET

*Juan Barco, et al. v. Kellytoy, Inc., et al.*, Los Angeles Superior Court Case No. 20STCV12539 and related case *Daniel Cardona v. Kellytoy Worldwide, Inc.*, Los Angeles Superior Court Case No. 20STCV21917

**Calculation Of Settlement Payments:** Each Settlement Class Member’s share of the Net Settlement Amount shall be based upon his or her “Compensable Workweeks,” or the total number of workweeks worked by each respective Settlement Class Member as nonexempt hourly employee as a laborer or operator, from March 27, 2016 to November 24, 2021 (“Class Period”). The individual Settlement Payment for each Settlement Class Member shall be calculated as follows: Defendants Kellytoy, (USA), Inc., Jonathan Kelly, and Kellytoy Worldwide, Inc. (“Defendants”) shall provide the Settlement Administrator with the Compensable Workweeks for each Settlement Class Member; the Settlement Administrator shall then divide the total number of weeks worked by all Settlement Class Members as non-exempt employees in California during the Class Period (“Workweeks”), multiplied by the number of Workweeks worked by that Settlement Class Member. Workweeks will be calculated by Defendants based on time and pay records, Any calendar week that a Settlement Class Member worked at least one day will be considered a Workweek. This calculation yields the amount of the Settlement Class Member’s “Individual Settlement Payment.” The Individual Settlement Payment will then be reduced by any required legal deductions and/or payroll withholdings.

**Your Compensable Workweeks and Estimated Individual Settlement Payment:** According to Defendants’ records, your Compensable Workweeks for the Class Period are <<CompWeeks>>. Based on the number of your Compensable Workweeks, **your estimated Individual Settlement Payment is <<EstSettPayment>>**. Please note that this is only an estimate; your actual payment may be greater or smaller than the amount reported above. **Further, you were employed by Defendants as non-exempt employees in California during the period from March 27, 2019 through preliminary approval or 90 days from August 26, 2021 (the "PAGA Period") (“Aggrieved Employee”).** As such, you are entitled to a PAGA payment. According to Defendants’ records, your PAGA Workweeks for the PAGA Period are <<CompWeeks>>. Based on the number of your PAGA Workweeks, **your estimated PAGA Payment is <<EstPayment>>**. Please note that this is only an estimate; your actual PAGA Payment may be greater or smaller than the amount reported above. **You will be paid this amount regardless of whether you request to be excluded from the Settlement.**

**Procedure for Disputing Information:** If you disagree with the number of Compensable Workweeks stated above, you must provide the Settlement Administrator with additional information and documentation postmarked on or before [the Response Deadline]. A dispute must be signed by the Settlement Class Member, reference the case name and case number 20STCV12539, and state all of the following: (1) the full name of the Settlement Class Member; (2) the number of Workweeks the Settlement Class Member contends is correct; and (3) attach any documentation to support his or her contended number of Workweeks. If there is a dispute, the Settlement Administrator will consult with the parties to determine whether an adjustment is warranted.

Any disputes and supporting documentation have to be mailed to the Settlement Administrator at the address listed below by First Class U.S. Mail, postmarked no later than [Response Deadline].

<p><i>Juan Barco, et al. v. Kellytoy, Inc., et al. Settlement</i> [ Settlement Administrator Address ] [ City, State Zip, Telephone Number ]</p>
--

Questions? CALL 1-xxx-xxx-xxxx

**NOTICE OF OBJECTION FORM**

*Juan Barco, et al. v. Kellytoy, Inc., et al.*, Los Angeles Superior Court Case No. 20STCV12539 and related case *Daniel Cardona v. Kellytoy Worldwide, Inc.*, Los Angeles Superior Court Case No. 20STCV21917

**You should fill out this Notice of Objection Form *only if you wish to object to the Settlement. If you have no objection to the Settlement, you do not have to do anything to receive Settlement benefits. Please note, you cannot submit this Notice of Objection Form, if you submit a Request for Exclusion.*** Objecting to the Settlement is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the court that you do not want to be a part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

***This form is to be used only if you wish to object to the Settlement. Settlement Class Members who do not timely make an objection will have waived their right to object to the Settlement.***

If you wish to object to the Settlement, you should fill out this Notice of Objection Form in its entirety, sign it, and return it to the Settlement Administrator at the address listed below by First Class U.S. Mail postmarked no later than [Response Deadline] or by returning it to the Settlement Administrator by fax no later than [Response Deadline]. Class Members who wish to object to the Settlement (without first submitting this Objection form) may appear at the Final Approval hearing to have your objection heard by the Court.

*Juan Barco, et al. v. Kellytoy, Inc., et al. Settlement  
[ Settlement Administrator Address ]  
[ City, State Zip, Telephone Number ]*

**Objection:**

Please print legibly: Name: \_\_\_\_\_

Dates of Employment (approximate): \_\_\_\_\_

Last four of Social Security# and/or Employee ID#: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip code: \_\_\_\_\_ Telephone#: \_\_\_\_\_

Do you intend to appear at the final approval hearing? \_\_\_\_\_ yes \_\_\_\_\_ no

The Reasons for your Objection: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Case No. 20STCV12539

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

Questions? CALL 1-xxx-xxx-xxxx

**REQUEST FOR EXCLUSION**

*Juan Barco, et al. v. Kellytoy, Inc., et al.*, Los Angeles Superior Court Case No. 20STCV12539 and related case *Daniel Cardona v. Kellytoy Worldwide, Inc.*, Los Angeles Superior Court Case No. 20STCV21917

*If you want to remain a member of the Settlement Class and receive an Individual Settlement Payment, you should **not** fill out this form: you are not required to do anything at this time.*

***This form is to be used only if you want to exclude yourself from the Settlement.***

If you exclude yourself from the Settlement: (1) you will not share in any recovery paid to Settlement Class Members as a result of the Settlement; (2) you will not be bound by any decision of the Court in the Lawsuit; (3) you may not object to the Settlement; and (4) you may pursue any claims asserted in the Lawsuit that you have against Defendants by filling your own lawsuit.

If you want to request to be excluded from the Settlement, you must fill out this Request for Exclusion in its entirety, sign it, and return it to the Settlement Administrator at the address listed below by First Class U.S. Mail postmarked no later than [Response Deadline], or by returning it to the Settlement Administrator by fax no later than [Response Deadline].

*Juan Barco, et al. v. Kellytoy, Inc., et al. Settlement*  
[ Settlement Administrator Address ]  
[ City, State Zip, Telephone Number ]

**Request for Exclusion**

I confirm that I have received notice of proposed Settlement in the Lawsuit. I wish to be excluded from the Settlement in the Class Action Lawsuit. I understand that by requesting exclusion from the Settlement, I will not receive any money from the Settlement of the Lawsuit. I understand that I will still receive my pro rata portion of the amount allocated to PAGA (if eligible), and will not be bound by the terms of the Settlement except the PAGA released claims that arise under PAGA (if eligible), or have any right to object, appeal, or comment.

Please print legibly:

Full Name: \_\_\_\_\_

Last four of Social Security# and/or Employee ID#: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip code: \_\_\_\_\_ Telephone #: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*Juan Barco, et al. v. Kellytoy, Inc., et al.*, Los Angeles Superior Court Case No. 20STCV12539 and related case *Daniel Cardona v. Kellytoy Worldwide, Inc.*, Los Angeles Superior Court Case No. 20STCV21917

*A Court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.*

THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT THE RIGHTS OF: All current and former non-exempt employees who worked for Defendants within California at any time during the period from March 27, 2016 through November 24, 2021 (the "Settlement Class"). For purposes of this Notice, Defendants Kellytoy (USA), Inc., Jonathan Kelly, and Kellytoy Worldwide, Inc. are collectively referred to as "Defendants." Further, the term "Plaintiffs" and/or "Class Representatives" collectively refers to Plaintiffs Juan Barco, Julio Xolalpa and Daniel Cardona.

### ***Why should you read this Notice?***

A proposed settlement (the "Settlement") has been reached in the class action lawsuits entitled *Juan Barco, et al. v. Kellytoy, Inc., et al.* (Case No. 1) and *Daniel Cardona v. Kellytoy Worldwide, Inc.* (Case No. 2). The cases were related and Case No. 1 is the lead case. Throughout this Notice of Proposed Class Action Settlement ("Class Notice"), Case No. 1 and Case No. 2 are collectively referred to as "the Lawsuit." The purpose of this Class Notice is to briefly describe the Lawsuit and to inform you of your rights and options in connection with the Lawsuit and the proposed Settlement. The proposed Settlement will resolve all claims in the Lawsuit, subject to Court approval.

A hearing concerning final approval of the proposed Settlement will be held before the Hon. Kenneth R. Freeman on [REDACTED], 2022 at X:XX x.m. in Department 14 of the Los Angeles Superior Court, located at 312 N. Spring St., Los Angeles, California 90012, to determine whether the Settlement is fair, adequate and reasonable. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and any final determination of these issues will be made at the final approval hearing. As a Settlement Class Member, you are eligible to receive an Individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Class Notice and the Second Revised Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

<b>YOUR LEGAL RIGHTS AND OPTIONS</b>	<b>IN THIS SETTLEMENT:</b>
<b>DO NOTHING</b>	If you do nothing, you will be considered part of the Settlement Class and you will receive settlement benefits as explained more fully below. You will be deemed a "Participating Class Member" and you will also give up rights to pursue a separate legal action against Defendants for the release of claims asserted in the Lawsuit as explained more fully below.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS</b>	You have the option to exclude yourself, in writing, from the Settlement. If you submit a valid Request for Exclusion, you will not receive any benefits under the Settlement and you will not be bound by the terms of the Settlement. You will be deemed a "Non-Participating Class Member"

Questions? CALL 1-XXX-XXX-XXXX

<b>OBJECT</b>	To object to the Settlement, you may write to the Settlement Administrator about why you don't like the Settlement. This option is available only if you do <b>not</b> exclude yourself from the Settlement.
---------------	--

***Who is affected by this proposed Settlement?***

All current and former non-exempt employees who worked for Defendants within California at any time during the period from March 27, 2016 through November 24, 2021” (“Settlement Class”). According to Defendants’ records, you are a member of the Settlement Class.

***What is this case about?***

On March 27, 2020, Plaintiffs Barco and Xolalpa filed a class action in Los Angeles Superior Court against Defendants Kellytoy (USA), Inc., Jonathan Kelly, and Hannah Kelly, Case No. 20STCV12539 (Case No. 1). Plaintiffs Barco and Xolalpa contend that Defendants Kellytoy (USA), Inc., Jonathan Kelly, and Hannah Kelly violated various provisions of the Labor Code by its alleged for: (1) Failure to Pay Minimum Wage (Cal. Lab. Code §§ 1182.12, 1194, 1197 & 1198, et seq.); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 1198 & 510, et seq.); (3) Failure to Pay Meal Period Compensation (Cal. Lab. Code §§ 226.7, 512(a) & 1198 et seq.); (4) Failure to Pay Rest Period Compensation (Cal. Lab. Code §§ 226.7 & 1198 et seq.); (5) Failure to Furnish Accurate Wage and Hour Statements (Cal. Lab. Code § 226); (6) Failure to Pay Wages Upon Discharge (Cal. Lab. Code §§ 201 & 202, et seq.); (7) Violation of the Private Attorneys General Act of 2004 (California Labor Code §2698, et seq.); and (8) Unfair Competition (Business and Professions Code § 17200 et seq.).

On June 5, 2020, Plaintiff Cardona filed a class action in Los Angeles Superior Court against Defendant Kellytoy Worldwide, Inc., Case No. 20STCV21917 (Case No. 2). Plaintiff Cardona contends that Defendant Kellytoy Worldwide, Inc. violated various provisions of the Labor Code by its alleged for: (1) Failure To Pay Overtime Wages; (2) Failure To Pay Minimum Wage; (3) Failure To Provide Meal Periods; (4) Failure To Provide Rest Periods; (5) Failure To Pay All Wages Upon Termination; (6) Failure To Provide Accurate Wage Statements; and (7) Unfair Competition.

As set forth above, these case were related and are referred to in this Class Notice as the Lawsuit. Further, Hannah Kelly was dismissed and is not longer part of the Lawsuit. Defendants deny all liability and are confident that they have strong legal and factual defenses to these claims, but recognize the risks, distractions, and costs associated with litigation. Defendants contend that their conduct is and has been lawful at all times relevant and that Plaintiffs’ claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiffs and Defendants (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendants. Both sides agree that, in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate and reasonable. Plaintiffs also believe that this Settlement is in the best interest of all Settlement Class Members. The Court has not ruled on the merits of the claims or defenses.



***Who are the attorneys representing the Parties?***

The attorneys representing the Parties in the Lawsuit are:

**Class Counsel**

Daniel Srourian, Esq.  
Srourian Law Firm, P.C.  
3435 Wilshire Blvd., Suite 1710  
Los Angeles, California 90010  
Telephone: (213) 474-3800  
Fax: (213) 471-4160  
Email: daniel@slfla.com

Sarkis Sirmabekian, Esq.  
Sirmabekian Law Firm, PC  
3435 Wilshire Blvd. Suite 1710  
Los Angeles, California 90010  
Telephone: (818) 473-5003  
Fax: (818) 476-5619  
Email: contact@slawla.com

Michael Nourmand, Esq.  
James A. De Sario, Esq.  
The Nourmand Law Firm, APC  
8822 West Olympic Boulevard  
Beverly Hills, California 90211  
Telephone: (310) 553-3600  
Facsimile: (310) 553-3603  
Email: mnourmand@nourmandlawfirm.com  
Email: jdesario@nourmandlawfirm.com

**Defendants' Counsel**

David J. Fishman, Esq.  
Janet Soultanian, Esq.  
Ballard Rosenberg Golper & Savitt LLP  
15760 Ventura Blvd. 18<sup>th</sup> Floor  
Encino, CA 91436  
Telephone: (818) 508-3707  
Fax: (818) 506-4827  
Email: dfishman@brgslaw.com

***What are the Settlement terms?***

Subject to final Court approval, Defendants will pay \$410,000.00 (the "Gross Settlement Fund") for: (a) Individual Settlement Payments to Settlement Class Members; (b) the Court approved Class Representative Enhancement Awards to Plaintiffs; (c) the Court approved attorneys' fees and litigation costs to Class Counsel; (d) the costs of administering the Settlement; and (e) payment to the State of California Labor and Workforce Development Agency ("LWDA") for PAGA penalties. As set forth more fully below, Defendants will receive a \$35,000.00 credit in consideration for "Pick Up Stix" payments made by them prior to the mediation of this matter on August 23, 2001. As such, Defendants

Questions? CALL 1-xxx-xxx-xxxx

will only be responsible for paying \$375,000.00 in new money (in addition to employer-side payroll taxes).

**Individual Settlement Payments.** After deduction from the Gross Settlement Fund for attorneys' fees and litigation costs, the Class Representative Enhancement Awards to Plaintiffs, the PAGA payment to the LWDA, and the costs of administering the Settlement, there will be a Net Settlement Fund. From this Net Settlement Fund, Individual Settlement Payment will be made to each Settlement Class Member who does not request to be excluded from the Settlement.

The Net Settlement Fund shall first be used to make True-Up Payments (see below for definition). The Net Settlement Fund shall then be divided among all Settlement Class Members on a proportional basis based upon the total number of workweeks worked by each respective Settlement Class Member during the Class Period. Your estimated Individual Settlement Payment is listed on the **INFORMATION SHEET** enclosed in this Class Notice

**Your Compensable Workweeks and Estimated Individual Settlement Payment:** According to Defendants' records, your Compensable Workweeks for the Class Period are <<CompWeeks>>. Based on the number of your Compensable Workweeks, **your estimated Individual Settlement Payment is <<EstSettPayment>>**. Please note that this is only an estimate; your actual payment may be greater or smaller than the amount reported above.

Further, you were employed by Defendants as non-exempt employees in California during the period from March 27, 2019 through November 24, 2021 (the "PAGA Period"). As such, you are entitled to a PAGA payment. According to Defendants' records, your PAGA Workweeks for the PAGA Period are <<CompWeeks>>. Based on the number of your PAGA Workweeks, **your estimated PAGA Payment is <<EstPayment>>**. Please note that this is only an estimate; your actual PAGA Payment may be greater or smaller than the amount reported above. You will be paid this amount regardless of whether you request to be excluded from the Settlement.

For tax reporting purposes, the payments to Settlement Class Members will be allocated 10% as wages, 45% as penalties, and 45% as interest. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable payroll taxes from the wage portion of the Individual Settlement Payments.

All checks for Individual Settlement Payments paid to Settlement Class Members shall advise that the checks will remain valid and negotiable for one hundred twenty (120) days from the date of the checks' issuance. If an Individual Settlement Payment check remains un-cashed after one hundred twenty (120) days from issuance, the Settlement Administrator shall cancel the un-cashed check and take all necessary steps to ensure that these fund(s), including unpaid cash residue(s), or other unclaimed or abandoned fund(s), are transmitted to the State Controller's Office, Unclaimed Property Division in the name of the Settlement Class Member. In such event, the Settlement Class Member shall nevertheless remain bound by the Settlement.

None of the parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Settlement Class Member.

**Class Counsel Attorneys' Fees and Litigation Costs, Class Representative Enhancement Awards, Settlement Administration Costs and Payment to the LWDA.** Class Counsel will ask the Court to award attorneys' fees up to \$136,666.00 (one-third of the Gross Settlement Fund) and reimbursement of reasonable costs incurred in the Lawsuit not to exceed \$25,000.00. In addition, Class Counsel will ask the Court to authorize the Class Representative Enhancement Award payments of \$5,000.00 each to the Class Representatives for their efforts in the prosecution of this Lawsuit. The Parties estimate the cost of administering the Settlement will not exceed \$25,000.00. A payment in the amount of \$7,500.00 will also be made to the LWDA for PAGA penalties.

***What are True-Up Payments and how do they affect the proposed Settlement?***

While this class action lawsuit was pending, Defendants separately and individually paid some Settlement Class Members an amount of money in exchange for those Settlement Class Members to release claims against Defendants. Payments made by Defendants to those Settlement Class Members totaled approximately \$35,000.00. These payments are referred to as "True-Up Payments." Accordingly, prior to distribution of the Net Settlement Fund to Settlement Class Members who have not opted out or objected, payments of \$8.57 per workweek worked during the Class Period, deducted from the GSA, shall first be made to the Settlement Class Members who did not sign a "Pick-Up Stix" release and/or accept a "Pick-Up Stix" payment from Defendants while litigation was pending ("True-Up Payments"). True-Up Payments are contemplated to assure equal treatment of all class members.

***What claims are being released by the proposed Settlement?***

Class Release:

**Release by Participating Class Members Who Are Not Aggrieved Employees.**

Upon the final approval by the Court of this Settlement Agreement, and except as to such rights or claims as may be created by this Settlement Agreement, and only after the settlement has been fully funded, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Defendants KellyToy USA, Inc., Kellytoy Worldwide, Inc., Jonathan Kelly, Hannah Kelly, and all of their past, present, and future owners, officers, directors, agents, employees, attorneys, insurers, re-insurers, parent companies, subsidiaries, affiliated or related entities, shareholders, partners, agents, investors, representatives, and all of their respective successors and assigns (including, but not limited to, Kelly Toys Holdings, LLC, Kelly Amusement Holding, LLC, and Jazwares, LLC) (collectively "Released Parties"), from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action], including any state or federal claims relating to the failure to pay wages and overtime, failure to provide meal or rest breaks, failure to provide accurate and complete wage statements, failure to keep requisite payroll records, failure to timely pay employees during employment or at termination, failure to reimburse employees for business expenses, unfair competition, waiting time penalties, interest, attorney's fees, or any other claim not presented in the operative complaint but are based on the facts alleged in the operative complaint ("Released Claims"). Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

**Release by Non-Participating Class Members Who are Aggrieved Employees.**

Upon the final approval by the Court of this Settlement Agreement, and except as to such rights or claims as may be created by this Settlement Agreement, and only after the settlement has been fully funded, all Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Action, including, including any state or federal claims relating to the failure to pay wages and overtime, failure to provide meal or rest breaks, failure to provide accurate and complete wage statements, failure to keep requisite payroll records, failure to timely pay employees during employment or at termination, failure to reimburse employees for business expenses, unfair competition, waiting time penalties, interest, attorney's fees, or any other claim not presented in the operative complaint but are based on the facts alleged in the operative complaint.

In addition to the releases made by the Settlement Class Members, and only after the settlement has been fully funded, Plaintiffs make the additional general release of all claims, known or unknown, in exchange and consideration of the Enhancement Award.

***What are my options in this matter?***

You have three options under this Settlement, each of which is further discussed below. You may (A) remain in the Settlement Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below. Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be a part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you remain in the Settlement Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you remain in the Settlement Class, you will be subject to any Judgment that will be entered in the Lawsuit, including the release of claims as described above.

***OPTION A. Remain in the Settlement Class.*** If you wish to remain in the Settlement Class and be eligible to receive an Individual Settlement Payment under the Settlement, ***you do not need to take any action.*** By remaining in the Settlement Class and receiving settlement monies, you consent to the release of claims as described above.

***OPTION B. Objecting to the Settlement:*** If you believe the proposed Settlement is not fair, reasonable or adequate in any way, you may object to it. To object, submit a statement of objection ("Notice of Objection Form") to the Settlement Administrator at [Administrator], PO BOX \_\_\_\_\_, [City], [State] [Zip]. The Notice of Objection Form shall state: (1) your full name; (2) the dates of your employment; (3) the last four digits of the Social Security number and /or Employee ID number; (4) the basis for the objection; (5) be signed by you; and (6) be postmarked on or before [Response Deadline] and returned to the Settlement Administrator at the address listed above. A Notice of Objection Form is enclosed with this Class Notice. You can also hire an attorney at your own expense to represent you in your Objection or appear at the Settlement Fairness hearing and orally object without first providing a written objection. Any Settlement Class Member who does not timely object in the manner described above shall be deemed to have waived any objections and shall be foreclosed from making any objections to the Settlement. **Please note, even if you submit an objection, you will be bound by the terms of the Settlement unless the Court does not approve the Settlement.**

***OPTION C. Request to Be Excluded from the Settlement.*** If you do not want to be part of the Settlement, you have to submit a Request for Exclusion (which is included in this Class Notice) to the Settlement Administrator at [Administrator], PO BOX \_\_\_\_\_, [City], [State] [Zip]. In order to be valid, your Request for Exclusion has to be signed and postmarked on or before [Response Deadline]. If you do not timely submit a signed Request for Exclusion (as evidenced by the postmark), your Request for Exclusion will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of claims as described above and all other terms of the Settlement. If you timely submit a signed Request for Exclusion, you will have no further role in the Lawsuit, and you will not be entitled to any benefit as a result of the Lawsuit and Settlement, and you will not be entitled to or permitted to object to the Settlement. You will however still receive your share of PAGA penalties if you are eligible.

***What is the next step in approval of the Settlement***

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and litigation costs, the Class Representative Enhancement Awards to Plaintiffs, the Settlement Administration Costs, and the payment to the LWDA for PAGA penalties, on \_\_\_\_\_, 2022 at X:XX x.m., in Department 14 of the Los Angeles Superior Court, located at 312 N. Spring St., Los Angeles, California 90012. If the Court grants final approval of the Settlement, your Individual Settlement Payment will be mailed to you. The Final Approval Hearing may be continued. In the event Final Approval is continued, notice of the new hearing date will be posted on the Settlement Administrator's website ([www.\\_\\_\\_\\_\\_](http://www._____.)). You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment. If the Court grants final approval of the Settlement, notice of final judgment will be posted on the Claims Administrator's website ([www.\\_\\_\\_\\_\\_](http://www._____.)) within seven (7) calendar days after entry of the Final Order and Judgment.

***How can I get additional information?***

This Class Notice summarizes the Lawsuit and the basic terms of the Settlement. More details regarding the Settlement and its terms are in the Revised Settlement Agreement itself. The Revised Settlement Agreement (attached as Exhibit 4 to the Supplemental Declaration of Daniel Srourian filed in support of Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement), and all other relating to the lawsuit are available for inspection and/or copying at Clerk's Office of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. Per recent health concerns, Settlement Class Members who wish to view documents related to this case at the Clerk's Office of the Los Angeles Superior Court must first make an appointment with the Clerk and follow all mandatory courthouse and/or courtroom rules including, but not limited to social distancing and the use of face masks and/or facial coverings. You may also access the Revised Settlement Agreement online at online at: [www.lacourt.org](http://www.lacourt.org). Additional information is also available from the Settlement Administrator or Class Counsel.

**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.**

Questions? CALL 1-xxx-xxx-xxxx