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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

10 JONATHAN HENRY,

11 *Plaintiff,*

12
13 vs.

14 DWWCM, INC. dba SOUTH COAST
15 TOYOTA and DOES 1 to 25, inclusive

16 *Defendant(s).*
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Case No.: 30-2020-01145799-CU-OE-CXC

**MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND RELEASE**

Action filed: 5/26/2020

Hearing Date/Time:
Reservation ID:

Department: CX105, Hon. Randall
Sherman

Submitted Herewith Under Separate Cover:
1. Declaration of Harout Messrelian In Support of
Motion for Approval of PAGA Settlement and
Release; and
2. [Proposed] Order

1 **I. INTRODUCTION**

2 Plaintiff Jonathan Henry (“Plaintiff”) and Defendant DWWCM, INC. dba SOUTH
3 COAST TOYOTA (“SOUTH COAST” or “Defendant(s)”) have reached an agreement to settle
4 the above-captioned action (the “Action”). The parties have memorialized the terms of this
5 settlement in a Settlement Agreement (the “Settlement Agreement”). Attached as “**Exhibit A**”
6 is a copy of the PAGA Settlement Agreement. By this Motion for Approval and pursuant to
7 California Labor Code § 2699(l), Plaintiff seeks an order permitting settlement on the terms
8 outlined in the Settlement Agreement. Plaintiff and Defendants are collectively referred to as the
9 “Parties” and any one of them individually may be referred to as a “Party.”

10 Defendants adamantly deny any liability or wrongdoing of any kind whatsoever
11 associated with the Action, and further deny that, for any purpose other than settling the Action,
12 the Action is appropriate for representative treatment. It is the desire of the Parties to fully,
13 finally, and forever compromise, and discharge all claims known or unknown related to those
14 alleged in the Action.

15 **II. ALLEGATIONS AND INVESTIGATION**

16 A. Defendant DWWCM, INC. dba SOUTH COAST TOYOTA is in the automotive
17 dealer industry. Plaintiff was hired to work for Defendant as a service technician on or around
18 February 4, 2019. Plaintiff’s employment with Defendant ended on or around early 2020. At
19 all times during his employment, Plaintiff was considered an hourly, non-exempt employee.

20 B. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
21 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
22 (“PAGA”). On January 23, 2020, Plaintiff, on behalf of himself and Defendants’ other
23 California non-exempt hourly employees (hereafter collectively the “Aggrieved Employees”)
24 gave written notice by electronic service to the California Labor and Workforce Development
25 Agency (“LWDA”) and via certified mail to Defendants of his claims against Defendants. In
26 his notice to the LWDA, Plaintiff asserted on behalf of himself and the Aggrieved Employees
27 that Defendant (1) failed to compensate twice the minimum wage (Industrial Welfare
28 Commission Wage Order 7-2001 section 9(B); (2) failed to compensate employees for rest and
29 recovery periods (Labor Code section 226.2); (3) failed to pay overtime compensation (Labor
30 Code Section 510); (4) failed to provide rest breaks (Labor Code Section 226.7); (5) failed to
31 provide meal breaks (Labor Code Sections 512, 226.7); (6) failed to timely pay wages due

1 during employment (Labor Code Section 204); (7) failed to provide accurate itemized wage
2 statements (Labor Code Section 226); (8) failed to keep accurate and complete payroll records
3 (Labor Code Section 1174/1174.5); (9) failed to pay wages at the end of employment (Labor
4 Code section 203); and (10) failed to reimburse business expenses (Labor Code Sections 2800,
5 2802). Plaintiff filed his initial lawsuit on May 26, 2020 in the Superior Court for the State of
6 California, County of Orange, Case no. 30-2020-01145799-CU-OE-CXC with one cause of
7 action for penalties under PAGA based on the same legal theories as set forth in the PAGA
notice as described above.

8 C. According to Defendant's records, it has employed 157 Aggrieved Employees
9 from March 15, 2019 through August 12, 2021 and that there are paychecks issued for a total of
10 approximately 4733 pay periods worked for that same time period.

11 D. Defendant denies any liability or wrongdoing of any kind whatsoever associated
12 with the lawsuit and the Representative PAGA Claim. It is the desire of the Parties to fully,
13 finally, and forever compromise, and discharge all claims known or unknown related to those
alleged in Plaintiff's lawsuit.

14 E. On August 12, 2021, the Parties attended a full day mediation session with
15 Experienced wage-and-hour mediator Gig Kyriacou, Esq. At the mediation, the Parties agreed
16 to settle the Representative PAGA claim for violation of Labor Code § 2698, *et seq.* Before
17 agreeing to the terms of the Settlement, the Parties engaged in informal discovery regarding
18 Defendant's policies, practices, operations, time and payroll information and other topics. In
19 advance of mediation, Defendant produced Plaintiff's personnel file, including time and payroll
20 data for Plaintiff and also produced the time records and payroll records for a sample of 22
21 aggrieved employees. Through extensive arm's length negotiations at the mediation and only
after discovery and investigation were performed, the Parties agreed to settlement terms.

22 F. The Parties conducted investigation of the facts and law both before and after the
23 lawsuit was filed. Counsel for the Parties have further investigated the applicable law as applied
24 to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code
25 violations claimed by Plaintiff. Based on their own independent investigations and evaluations,
26 the Parties and their respective counsel are of the opinion that the Settlement for the
27 consideration and on the terms set forth in the PAGA settlement agreement are fair, reasonable
28 and adequate and are in the best interests of Plaintiff, the Aggrieved Employees, and Defendant

1 in light of all known facts and circumstances and the risks inherent in litigation, especially in
2 this pandemic era when most businesses are struggling to remain afloat, much less prosper and
3 make a large profit.

4 G. The Parties further recognize that the issues presented in the Representative
5 PAGA Claim are likely only to be resolved with extensive and costly pretrial and trial
6 proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay,
7 and expense disproportionate to the maximum potential benefits, especially in light of the
8 pandemic era and the business climate. *See* Declaration of Harout Messrelian, Plaintiff's
counsel, at paragraph 10, filed concurrently.

9 **III. FAIRNESS OF THE SETTLEMENT**

10 A. While this *Jonathan Henry* lawsuit is a Representative PAGA Claim, the Parties
11 are not obligated to follow the class action procedural rules for obtaining approval of this
12 settlement. *Arias v. Superior Court (Angelo Dairy)* (2009) 46 Cal.4th 969.

13 B. Plaintiff alleges that the strongest claims, especially on paper, is that Plaintiff and
14 other Aggrieved Employees were not provided timely, uninterrupted meal breaks and were not
15 reimbursed for all business expenses. In terms of Plaintiff's other claims for failure to pay double
16 the minimum wage and failure to pay overtime, those claims are tied to the expense
17 reimbursement claim. In terms of rest breaks, there was nothing observed in the data that
18 indicated any facial violations. Furthermore, Defendant had written meal and rest break policies
19 and they were compliant. Additionally, the other associated PAGA claims are derivative to the
20 meal break allegations for which Defendant would not have additional liability for inaccurate
21 pay stubs, failure to pay all wages owed, failure to keep accurate payroll records, and failure to
22 pay wages at the end of employment.

23 C. Plaintiff contends that the civil penalty statutes applicable to the Representative
24 PAGA Claim are Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802 and 2699(f)(2). Under
25 these civil penalty statutes, an employee who suffers a Labor Code violation, may be awarded a
26 sum of money for each pay period in which he or she was underpaid. However, under Labor
27 Code § 2699(e)(2), the Court can reduce an award of civil penalties if the award is unjust,
arbitrary, oppressive, or confiscatory.

28 D. Under the civil penalty formulas applicable under PAGA, Plaintiff estimated a
maximum exposure of approximately \$234,650 for civil penalties for Plaintiff's strongest

1 disputed claims of failure to provide meal periods and failure to reimburse all business expenses.
2 Plaintiff's analysis, which Defendant vehemently disputes, revealed a 23% violation rate for
3 either late, short, or interrupted meal periods. As such, with the 23% violation rate, the maximum
4 exposure would be \$54,450, which is calculated as \$50 penalty multiplied by 1089 pay periods
5 (23% of the 4733 pay periods). It is important to note that Defendant refutes Plaintiff's above
6 analysis and calculations. Assuming that Plaintiff's calculations and analysis is accurate, the
7 maximum exposure presumes that the Court will not reduce the penalty award as unjust, arbitrary,
8 oppressive, or confiscatory. As far as the claim for business expense reimbursement, Plaintiff's
9 theory is that Defendant's did not provide hand tools to service technicians in order for them to
10 effectuate their job duties. Alternatively, Plaintiff's position is that even if Defendant did provide
11 tools, there were not enough tools for all of the technicians and so the technicians had to bring
12 and utilize their own personal tools. Defendant contends that prior to 2019, they had 3 sets of
13 tools for the technicians and that in 2019, Defendant purchased an additional three sets of tools,
14 bringing the total to 6 sets. See **Declaration of Maria Newson** attached to this Motion as **Exhibit**
15 **B.** Since there were approximately 47 technicians in the PAGA period, which comprised
16 approximately 1802 pay periods, the **maximum** exposure for the unreimbursed business
17 expenses would be \$180,200, which is calculated as \$100 penalty multiplied by 1802 pay periods.
18 Moreover, Plaintiff's estimate presumes that the Court will find Defendant liable for the
19 maximum possible civil penalty for failure to reimburse business expenses for every paycheck
20 Defendant issued to the Aggrieved Employees; and not reduce the penalty award as unjust,
21 arbitrary, oppressive, or confiscatory. In addition, Plaintiff's estimate presumes that every single
22 one of the 47 technicians brought their own hand tools and did not use the tools that Defendant
23 made available. This is a highly unlikely result and not in line with reality, especially since
24 Defendant declared under oath that they had 6 tool sets available for the technicians starting in
25 2019.

26 D. Moreover, Plaintiff is aware of no California state courts awarding Plaintiff
27 multiple PAGA penalties for the same violation for the same pay period under different Labor
28 Code provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to "stack"
civil penalties arising under the various Labor Code statutes. Furthermore, judges have awarded
extremely small sums to PAGA claimants in the past. In addition, Defendant would make an
argument under *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (Cal. App. 2d

1 Dist., Sept. 26, 2019) and other similar cases, that meal period or expense reimbursement
2 violations are not a predicate for civil penalties for improper wage statements and untimely final
3 wages under Labor Code secs.201-203, 226, 226.3, and 2699. Defendant also adamantly disputes
4 all of Plaintiff's allegations in the operative Complaint.

5 E. The source of penalties available is under PAGA, which allows employees to seek
6 civil penalties for certain violations of the Labor Code so long as the penalties are not unjust,
7 arbitrary, oppressive, or confiscatory. There are no State Court decisions under the PAGA to date
8 with substantial awards of civil penalties. There is a substantial risk that the Court could reduce
9 civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of willful
10 and intentional conduct. The PAGA expressly counsels against such awards. *See Lab. Code* §
11 2699(e)(2) ("...a court may award a lesser amount than the maximum civil penalty amount
12 specified by this part if, based on the facts and circumstances of the particular case, to do
13 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.").
14 Further, although, class certification is not required for a PAGA claim, Defendant could contend
15 that Plaintiff should show that the PAGA claims are manageable.

16 F. As such, Defendant could also convince the Court to dismiss the claims due to
17 unmanageability. *Wesson v. Staples The Office Superstore, LLC* (2021) 68
18 Cal.App.5th 746 ("*Wesson*"); *Feltzs v. Cox Communs. Cal.* (October 21, 2021) 2021 U.S. Dist.
19 LEXIS 207087. On September 9, 2021, the California Court of Appeal issued the significant
20 decision in *Wesson v. Staples the Office Superstore, LLC*, holding that courts have authority to
21 ensure that PAGA claims are manageable, and that courts may limit or strike unmanageable
22 PAGA claims. Defendant contends that Plaintiff's allegations require a host of individualized
23 inquiries which would arguably devolve into a series of mini-trials based on whether each
24 employee voluntarily elected to unilaterally waive a provided meal period or authorized rest
25 break, based on position titles, job duties and the type of work they perform or based on whether
26 each technician used Defendant's tools or whether they brought and utilized their own hand tools
27 to effectuate their job duties. (*See, e.g., Brinker*, 53 Cal.4th at 1004.) In *Ortiz v. CVS Caremark*
28 *Corp.*, the court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at
*3-4 (N.D. Cal. 2014). The Ortiz court cited the "multitude of individualized assessments" that
case would have required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*,
and dismissed PAGA claims where, as here, there are a large number of allegedly aggrieved

1 individuals whose claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*,
2 2014 WL 5904904, at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at
3 *4 (C.D. Cal. 2015); *see also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4
4 (E.D. Cal. 2014) (bifurcating trial of plaintiff’s claim from representative claims: “in light of the
5 number of potential aggrieved employees, judicial economy favors deferring the representative
6 portion of the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal.
7 May 13, 2015). DS, ¶ 24. The risk of an unmanageable trial is heightened in a representative
8 PAGA claim because the burden of proof rests with the plaintiff to establish violations of the
9 Labor Code “with respect to each and every individual on whose behalf [they] seek[] to recover
10 civil penalties.” *Molina v. Dollar Tree Stores, Inc.*, 2013 U.S. Dist. LEXIS 138642, at *33-34
11 (C.D. Cal. Aug. 9, 2013); *Hibbs-Rines v. Seagate Techs, LLC*, 2009 WL 513496, at *4 (N.D. Cal.
12 Mar. 2, 2009). Moreover, in a PAGA case the plaintiff must prove liability with respect to “each
13 and every individual” through representative evidence – but without sacrificing the defendant’s
14 due process right to present proof of their affirmative defenses. *Elkins v. Superior Court*, 41 Cal.
15 4th 1337, 1357 (2007); *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561 (2011); *Duran v.*
16 *U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1, 33-34 (2014). Plaintiff is required to establish a violation
17 of the Labor Code in each pay period of each and every one of the approximately 157 employees.
The Court could find that this is an impractical task and require the Eligible Employees to bring
individual claims instead of a PAGA representative claim.

18 G. The Parties further recognize that the issues presented in the Representative
19 PAGA Claim are likely only to be resolved with extensive and costly pretrial and trial
20 proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay,
21 and expense disproportionate to the maximum potential benefits to the Subject Employees and
22 Plaintiff from continued litigation, especially in the pandemic era where further and extensive
23 litigation may cause businesses to shut down, resulting in no monetary compensation to Plaintiff,
Plaintiff’s attorneys, other Aggrieved Employees, and the State of California.

24 H. The settlement of the Representative PAGA Claim involves monetary relief to all
25 Aggrieved Employees, Plaintiff, his attorneys, and the State of California.

26 I. Furthermore, Plaintiff recognizes that continued litigation presents significant
27 risks that support a significant downward departure from Plaintiff’s estimated civil penalties
28 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable

1 compromise amount for these claims and is in the best interest of Plaintiff and Eligible
2 Employees and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479
3 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just,
4 reasonable, adequate, and equitable to Defendant, Plaintiff, and the State, especially in light of
5 the current economic climate, and are the product of good faith, and informed arms-length
6 negotiations between the Parties consistent with public policy and fully comply with applicable
7 provisions of law. *See* Declaration of Harout Messrelian, Plaintiff's counsel, at paragraph 19,
8 filed concurrently.

9 **IV. TERMS AND PROCEDURES OF THE SETTLEMENT**

10 A. The Settlement covers any and all civil penalties claims arising from Plaintiff's
11 allegations in his Complaint, as laid out above.

12 B. Defendant agrees to pay \$89,500.00 toward the Settlement (the "Gross Settlement
13 Amount" or "GSA") which will be distributed by Defendant as follows:

14 1. \$29,833.33 (33 1/3% of the GSA) in attorneys' fees to Harout Messrelian,
15 Esq. of Messrelian Law Inc.

16 2. \$9,996.20 in attorney litigation costs to Harout Messrelian, Esq. of
17 Messrelian Law Inc.

18 3. \$2,750.00 in PAGA Settlement Administrator costs to the Settlement
19 Administrators (Simpluris).

20 4. \$46,920.47 (the "Net Settlement Amount" or "NSA") will be divided as
21 follows:

22 a. \$35,190.35 (75% of "NSA") to the LWDA, which represents
23 civil penalties payable to the LWDA under the Labor Code
24 Private Attorneys General Act ("PAGA"), Labor Code section
25 2698, *et seq.*; and

26 b. \$11,730.12 (25% of NSA) (the "Aggrieved Employee
27 Amount") to the Aggrieved Employees which represents civil
28 penalties payable to the Aggrieved Employees as
compensation for civil penalties that are allegedly owed on the
Representative PAGA Claim for the period from March 15,
2019 through Approval of the Settlement.

C. Plaintiff and each Aggrieved Employee shall receive a portion of the Aggrieved
Employee Amount on a pro-rata basis by multiplying the Aggrieved Employee Amount by the
ratio of (i) the number of pay periods worked by the Aggrieved Employee during the release

1 period and (ii) the total number of pay periods worked by all Aggrieved Employees during the
2 release period.

3 D. For purposes of computing taxes, one-hundred percent (100%) of the Aggrieved
4 Employee Settlement Award shall be considered to be a civil penalty and shall not be subject to
5 withholding, unless otherwise required by law. The Claims Administrator shall file proof of
6 payment.

7 **V. THE PROPOSED FEE AMOUNT FOR ATTORNEYS' FEES AND COST**
8 **AMOUNT FOR LITIGATION EXPENSES IS FAIR, ADEQUATE, AND REASONABLE**
9 **AND SHOULD BE APPROVED**

10 A. Plaintiff's counsel represents Plaintiff on a straight contingency basis. Plaintiff
11 counsel's request for \$29,833.33 in attorney fees and \$9,996.20 in litigation costs is fair and
12 reasonable. "Empirical studies show that, regardless of whether the percentage method or the
13 lodestar method is used, fee awards in class actions average around one-third of the recovery.
14 Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 47 fn. 11 (quoting Shaw v. Toshiba America
15 Information Systems, Inc. (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; *See also* Lafitte v. Robert
16 Half Int'l Inc. (Cal. Aug. 11, 2016) 1 Cal.5th 480, 503, 376 P.3d 672, 686 (holding that courts
17 can use the percentage method for the calculation of attorneys' fees). This is also consistent with
18 Plaintiff's Counsel's experience in cases involving PAGA claims. This award is justified here
19 because Plaintiff's counsel achieved a strong result for the Aggrieved Employees and the State
20 while bearing the substantial burdens of contingency representation. *See* Declaration of Harout
21 Messrelian, Plaintiff's counsel, at paragraph 21, filed concurrently.

22 B. It is an accepted practice in wage and hour class action settlements to award
23 attorneys' fees to Plaintiff's Counsel based on a percentage of the total settlement value agreed
24 upon by the parties. California courts have long recognized that an appropriate method for
25 awarding attorneys' fees in class actions is to award a percentage of the common fund. (Serrano
26 v. Priest (1977), 20 Cal.3d. 25, 48-49 ["when a number of persons are entitled in common to a
27 specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the
28 creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees
out of the fund"]; Wershba v. Apple Computer, Inc. (2001), 91 Cal.App.4th, 230, 254; Lealao v.
Beneficial California, Inc. (2000) 82 Cal.App.4th 19, 26-30.)

C. The litigation costs expended to aid in the representation of the Aggrieved

1 Employees include the following : lawsuit filing fee of \$1,447.20, PAGA initial filing fee of
2 \$75.00, a mediation fee of \$7,500.00 (for Plaintiff's portion of the mediation); expert data analysis
3 fee of \$750.00; service of lawsuit fee of \$110.00; court call fee of \$94.00; and stipulation and
4 order filing fee of \$20.00. All of these costs are documented and reasonably incurred. *See*
5 Declaration of Harout Messrelian, Plaintiff's counsel, at paragraph 21, filed concurrently.

6 **VI. NO ADMISSION OF LIABILITY OR WRONGDOING**

7 The payment of consideration or any other obligation are not and shall not be construed
8 in any way as an admission of wrongdoing or liability on the part of Defendant, or any other
9 person or business entity. Defendant adamantly denies all allegations of wrongdoing arising out
10 of the employment relationship between the Parties, including the Aggrieved Employees. The
11 Parties intend merely to avoid the expense, delay, uncertainty and burden of continued litigation.

12 **VII. PAGA SETTLEMENT ADMINISTRATION**

13 A. The Parties agree to use SIMPLURIS to handle the administration of this Settlement.

14 B. Notice to Aggrieved Employees.

15 (a) Notice.

16 Notice shall be provided to the Aggrieved Employees in the following manner:

17 (1) No later than ten(10) calendar days after the Effective Date, Defendant shall provide the
18 Settlement Administrator with the following:

19
20 A list of all Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved
21 Employees List shall state the first name and last name in separate columns for each
22 Aggrieved Employee; the last known home address for each Aggrieved Employee;
23 each Aggrieved Employee's social security number, and each Aggrieved
24 Employee's respective number of pay periods worked for Defendant during the
25 PAGA Period.

26
27 (2) The Settlement Administrator shall utilize the United States National Change of
28 Address ("NCOA") database and also perform an *Accurint* or similar skip tracing

1 process to determine the best most recent addresses for the Aggrieved Employees prior
2 to mailing the notices and settlement checks.

3
4 (3) No later than twenty (20) days after the Effective Date, the Settlement Administrator
5 shall mail the Notice of PAGA Settlement (attached hereto as Exhibit "A") together
6 with a settlement payment to all Aggrieved Employees by first-class United States mail,
7 postage prepaid, with directions to the Postmaster to forward the Notice of PAGA
8 Settlement and return all undeliverable Notices to the Settlement Administrator. For
9 each Notice of PAGA Settlement that is returned as undeliverable, the Settlement
10 Administrator shall promptly attempt to locate the Aggrieved Employee by performing
11 an additional skip trace and shall re-mail the Notice and settlement check no later than
12 ten (10) days following receipt of the undeliverable Notice.

13
14 C. Settlement Payment Procedures.

15 (a) Deposit of Gross Settlement Amount with Settlement Administrator.

16
17 No later than thirty(30) days after the Effective Date, Defendant shall deposit the Gross
18 Settlement Amount with the Settlement Administrator.

19
20 i. PAGA Payments.

21 The total sum available for payment of PAGA penalties (the "Net Settlement Amount")
22 shall be calculated by deducting Plaintiff's Attorney's Fees, Litigation Costs, and Settlement
23 Administration Costs. The Net Settlement Amount shall be characterized as 100% civil
24 penalties.

25
26 The Settlement Administrator shall pay seventy-five percent (75%) of the Net Settlement
27 Amount to the LWDA no later than forty-five (45) days after the Effective Date. The remaining
28

1 twenty-five percent (25%) of the Net Settlement Amount (the “Employee Net Settlement
2 Amount”) shall be paid to Aggrieved Employees based on the following formula:

3
4 The Employee Net Settlement Amount shall be divided by the total pay periods worked
5 for Defendant by all Aggrieved Employees during the PAGA Period to yield the “Employee
6 Settlement Share Value.” Each Aggrieved Employee shall be paid their individual total pay
7 periods worked for Defendant during the PAGA Period multiplied by the Employee Settlement
8 Share Value.

9
10 All Aggrieved Employees who cash their settlement check may receive an IRS Form
11 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in
12 compliance with IRS guidelines).

13 The settlement checks issued to Aggrieved Employees shall remain valid for one hundred
14 eighty (180) days. Thereafter, all unclaimed funds shall escheat to the State of California
15 unclaimed property fund in the name of the Aggrieved Employee.

16
17 ii. Plaintiff’s Attorneys’ Fees and Litigation Costs.

18 No later than forty-five (45) days after the Effective Date, the Settlement Administrator
19 shall pay the court approved Plaintiff’s Attorneys’ Fees and Litigation Costs to Plaintiff’s
20 Counsel.

21
22 Any Plaintiff’s Attorneys’ Fees or Litigation Costs awarded to Plaintiff’s Counsel shall
23 be deducted from the Gross Settlement Amount for the purpose of determining the Net Settlement
24 Amount. The “future” aspect of these amounts include, without limitation, all time and expenses
25 expended by Plaintiff’s Counsel in defending the Settlement and securing Approval of the
26 Agreement (including any appeals therein). There will be no additional charge of any kind to the
27 Aggrieved Employees or request for additional consideration from Defendant for such work.
28 Plaintiff’s Attorneys’ Fees or Litigation Costs shall include all attorneys’ fees, litigation costs,

1 and expenses for which Plaintiff and Plaintiff's Counsel could claim under any legal theory
2 whatsoever.

3
4 iii. Settlement Administrator Expenses.

5 Upon completion of the Settlement Administrator's duties under this Agreement, the
6 Settlement Administrator shall pay itself its actual costs in administering the settlement, up to the
7 \$2,750.00 capped estimate provided.

8
9 **VIII. TAXES**

10 Plaintiff and each Aggrieved Employee bear full responsibility for the payment of any
11 taxes or withholdings arising from the Aggrieved Employee Settlement Awards paid to them.

12 **IX. RELEASED CLAIMS**

13 Upon the approval by the Court of this Settlement, Plaintiff, the State of California and
14 each Aggrieved Employee shall fully release and forever discharge Defendant and the Released
15 Parties from any and all claims, rights, demands, liabilities for violation of PAGA (Labor Code
16 § 2699, et seq.) that arose during the Release Period as it relates to Labor Code section 2698, et
17 seq. for alleged violations of California Labor Code sections 201, 202, 203, 204, 204(b), 210,
18 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 2802, and Industrial Welfare Commission
19 Wage Orders nos. 4/7.

20 Plaintiff entered into a confidential individual settlement agreement with Defendant to
21 settle his individual claims. As part of this confidential agreement, Plaintiff also provided
22 Defendant with a general release of all claims, whether known or unknown, including unknown
23 claims covered by Civil Code Section 1542. *See*, Declaration of Harout Messrelian ¶ 22.

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1 **X. CONCLUSION**

2 Plaintiff respectfully requests the Court grant this Motion for Approval of the PAGA
3 settlement.

4 Respectfully Submitted,

5 MESSRELIAN LAW INC.

6
7 DATED: December 29, 2021

8 By 

9 Harout Messrelia, Esq.
10 Attorneys for Plaintiff
11 JONATHAN HENRY
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EXHIBIT A

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

Jonathan Henry v. DWWCM, INC., et al.

(Orange County Superior Court Case No. 30-2020-01145799-CU-OE-CXC)
(hereinafter the “Action”)

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of this action shall be memorialized by and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I below, or elsewhere in this Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement (“Agreement”).

This Agreement is made by and between DWWCM, INC., d/b/a South Coast Toyota (“SCT” or “Defendant”) and Plaintiff JONATHAN HENRY (“Plaintiff”), on behalf of the general public as private attorney general, (Defendant and Plaintiff as defined herein, are sometimes collectively referred to as the “Parties.”) Subject to the Court’s subsequent approval of the Settlement, this Agreement shall be effective once fully executed by the Parties.

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant to pay the Gross Settlement Amount of Eighty-Nine Thousand Five Hundred Dollars And Zero Cents (\$89,500.00) for settlement of the Private Attorneys General Act (“PAGA”) claim, which shall be inclusive of Plaintiff’s Counsel’s attorneys’ fees and costs and the settlement administrator’s fees and costs.

The Parties agree that in addition to the Gross Settlement Amount, Defendant shall make a separate payment to Plaintiff to be memorialized in a separate settlement agreement in return for a general release of all claims.

Article I.

Definitions.

Section 1.01 Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) “Action” shall refer to the lawsuit entitled: *Jonathan Henry v. DWWCM, INC., et al., Orange County Superior Court Case No. 30-2020-01145799-CU-OE-CXC.*
- (b) “Aggrieved Employees” is defined as all non-exempt employees of SCT in the state of California during the PAGA Period.
- (c) “Court” means the Superior Court for the State of California, County of Orange.
- (d) “Counsel for Defendant SCT” is:

Christine D. Baran, Esq.
Andrew C. Crane, Esq.
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, CA 92614
Phone: (949) 851-2424, Fax: (949) 851-0152
Email: cbaran@fisherphillips.com
Email: acrane@fisherphillips.com

- (e) “Effective Date” means the latest of the following dates to occur after the date the Court enters the final order approving the Settlement as described in this Agreement:

i. If an appeal or other review is sought from the final order approving Settlement, the next day after the final order approving Settlement is affirmed, the appeal or other review is dismissed or denied, and the final order approving Settlement is no longer subject to judicial review or other challenge;

ii. If an objection to the Settlement is filed or an opposition to the Settlement is otherwise presented to either Court, but no appeal or other review is sought from the final order approving Settlement, the sixty-fifth (65th) calendar day after the final order approving Settlement is signed and entered; or

iii. If no objection or opposition to the Settlement is submitted, seven (7) calendar days after the final order approving Settlement.

(f) “Gross Settlement Amount” refers to the Eighty-Nine Thousand Five Hundred Dollars and Zero Cents (\$89,500.00), which shall be paid by Defendant to fund the Settlement, and from which all payments of the Court approved amounts for Plaintiff’s Counsel’s attorneys’ fees and costs, Settlement Administrator’s costs, and PAGA penalties shall be made.

(g) “Net Settlement Amount” means the total sum available for payment of PAGA penalties to the Aggrieved Employees and to the State of California Labor and Workforce Development Agency (“LWDA”) after deducting Plaintiff’s Counsel’s fees and costs and the Settlement Administrator’s costs, collectively referenced in Section 3.01(a-d) from the \$89,500.00 Gross Settlement Amount.

(h) “PAGA Period” means March 15, 2019 to the date the Court enters the final order approving the Settlement.

(i) “Plaintiff’s Counsel” is:

Harout Messrelian, Esq.
MESSRELIAN LAW, INC.
500 N. Central Ave., Suite 840
Glendale, CA 91203
Phone: (818) 484-6531, Fax: (818) 956-1983
Email: hmessrelianlaw@gmail.com

(j) “Released Claims” mean any and all claims relating to any and all facts and claims asserted in the Action or any other claims, under PAGA, that could have been asserted in the Action based on the facts alleged, including but not limited to any and all claims for PAGA penalties for violations of the California Labor Code governing: meal and rest breaks; wage statement violations, payment of minimum wages, payment of overtime wages, payment

of rest, recovery, and non-productive time for employees compensated by piece-rate; indemnification pursuant to Labor Code Section 2802, failure to timely pay wages, failure to keep accurate and complete payroll records showing the correct wages paid; and alleged violations of California Labor Code Sections 201, 202, 203, 204, 204(b), 210, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 2802; and of IWC Wage Orders 4 and 7.

- (k) “Released Parties” means Defendant and its past, present and future parent companies, subsidiaries, divisions, affiliates, predecessors, successors, investors, manufacturers, and assigns and their current and former employees, managing agents, servants, consultants, agents, officers, directors, members, shareholders, trustees, representatives, independent contractors, attorneys, insurers, reinsurers, as well as any individual or entity that could be alleged to be jointly liable with Defendant.
- (l) “Settlement Administrator” refers to Simpluris.
- (m) “Settlement” or “Agreement” refers to the settlement of the PAGA claim reached by the Parties of the Action.

Article II.

Background.

Section 2.01 Background.

- (a) On May 26, 2020, Plaintiff filed the Action in the Superior Court of the State of California for the County of Orange alleging a single cause of action brought under the Private Attorneys General Act on behalf of himself and as a representative action on behalf of the State of California and other aggrieved employees, based on various violations of the California Labor Code.

- (b) Subsequently, the Parties engaged in an extensive investigation along with informal discovery. The parties also attended a full day mediation with Gig Kyriacou, Esq.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Allocation of the Gross Settlement Amount.

The Parties will cooperate in obtaining through written stipulation or unopposed motion or *ex parte* application, if required, an Order from the Court approving the payment of the Gross Settlement Amount as follows:

(a) **Plaintiff's Attorneys' Fees.**

Plaintiff's Counsel may request and be paid up to 33 1/3 % of the Gross Settlement Amount or Twenty-Nine Thousand, Eight-Hundred and Thirty-Three Dollars (\$29,833.33) for attorneys' fees ("Plaintiff's Attorney's Fees.") If Plaintiff's Counsel's request for 33 1/3% of the Gross Settlement Amount is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to the LWDA and the Aggrieved Employees. Defendant agrees not to oppose Plaintiff's Attorney's Fees by Plaintiff's Counsel.

(b) **Litigation Costs.**

Plaintiff's Counsel may request up to Ten Thousand Dollars (\$10,000.00) from the Gross Settlement Amount as reimbursement for expenses incurred in the Action ("Litigation Costs.") If Plaintiff's Counsel's request for reimbursement of Litigation Costs is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees. Defendant agrees not

to oppose a request for reimbursement of Litigation Costs not exceeding the foregoing amount.

(c) Administration Costs.

Plaintiff's Counsel may request up to Ten Thousand Dollars (\$10,000.00) from the Gross Settlement Amount as payment to the Settlement Administrator for costs incurred by the Settlement Administrator in connection with the Settlement, including mailing of the Notice of PAGA Settlement described herein ("Settlement Administration Costs"). To the extent the Settlement Administration fall below this amount, they shall be included in the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees.

(d) Net Settlement Amount.

The Net Settlement Amount shall be determined by deducting Plaintiff's Attorney's Fees, Litigation Costs, and Settlement Administration Costs, as set forth in sections 3.01(a), (b), and (c), from the Gross Settlement Amount. The Net Settlement Amount shall be distributed as set forth below and as follows: The Settlement Administrator shall pay seventy-five percent (75%) of the Net Settlement Amount to the LWDA and the remaining twenty-five percent (25%) to Aggrieved Employees.

The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of the payment of PAGA penalties as described in this Agreement.

Section 3.02 Court Approval.

The Parties will seek the Court's approval of the PAGA settlement and the payment of penalties as described in this Agreement by way of a stipulation or unopposed motion or *ex parte* application to be filed by Plaintiff's Counsel or as directed by the Court. Plaintiff's Counsel will lodge this Agreement with the Court for its approval. Pursuant to Labor Code section 2699(1)(2), Plaintiff also will submit a copy of this Agreement to the LWDA at the same time it is submitted to the Court. The Court's approval of the payment of the Gross Settlement Amount as described in this Agreement shall be embodied in a written Order.

Section 3.03 Notice to Aggrieved Employees.

(a) Notice.

Notice shall be provided to the Aggrieved Employees in the following manner:

- (1) No later than ten(10) calendar days after the Effective Date, Defendant shall provide the Settlement Administrator with the following:

A list of all Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees List shall state the first name and last name in separate columns for each Aggrieved Employee; the last known home address for each Aggrieved Employee; each Aggrieved Employee's social security number, and each Aggrieved Employee's respective number of pay periods worked for Defendant during the PAGA Period.

- (2) The Settlement Administrator shall utilize the United States National Change of Address ("NCOA") database and also perform an *Accurint* or similar skip tracing process to

determine the best most recent addresses for the Aggrieved Employees prior to mailing the notices and settlement checks.

- (3) No later than twenty (20) days after the Effective Date, the Settlement Administrator shall mail the Notice of PAGA Settlement (attached hereto as Exhibit "A") together with a settlement payment to all Aggrieved Employees by first-class United States mail, postage prepaid, with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices to the Settlement Administrator. For each Notice of PAGA Settlement that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by performing an additional skip trace and shall re-mail the Notice and settlement check no later than ten (10) days following receipt of the undeliverable Notice.

Section 3.04 Settlement Payment Procedures.

- (a) Deposit of Gross Settlement Amount with Settlement Administrator.

No later than thirty(30) days after the Effective Date, Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator.

- (b) PAGA Payments.

The total sum available for payment of PAGA penalties (the "Net Settlement Amount") shall be calculated by deducting Plaintiff's Attorney's Fees, Litigation Costs, and Settlement Administration Costs, collectively referenced in Section 3.01(a), (b), and (c), from the \$89,500.00 Gross Settlement Amount. The Net Settlement Amount shall be characterized as 100% civil penalties.

The Settlement Administrator shall pay seventy-five percent (75%) of the Net Settlement Amount to the LWDA no later than forty-five (45) days after the Effective Date. The remaining twenty-five percent (25%) of the Net Settlement Amount (the “Employee Net Settlement Amount”) shall be paid to Aggrieved Employees based on the following formula:

The Employee Net Settlement Amount shall be divided by the total pay periods worked for Defendant by all Aggrieved Employees during the PAGA Period to yield the “Employee Settlement Share Value.” Each Aggrieved Employee shall be paid their individual total pay periods worked for Defendant during the PAGA Period multiplied by the Employee Settlement Share Value.

All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in compliance with IRS guidelines).

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days. Thereafter, all unclaimed funds shall escheat to the State of California unclaimed property fund in the name of the Aggrieved Employee.

(c) Plaintiff’s Attorneys’ Fees and Litigation Costs.

No later than forty-five (45) days after the Effective Date, the Settlement Administrator shall pay the court approved Plaintiff’s Attorneys’ Fees and Litigation Costs to Plaintiff’s Counsel.

Any Plaintiff’s Attorneys’ Fees or Litigation Costs awarded to Plaintiff’s Counsel shall be deducted from the Gross Settlement Amount for the purpose of determining the Net Settlement Amount. The “future” aspect of these amounts include, without limitation, all time and expenses expended by Plaintiff’s Counsel in defending the Settlement and securing Approval of the Agreement (including any appeals therein). There will be no additional charge of any kind to the

Aggrieved Employees or request for additional consideration from Defendant for such work. Plaintiff's Attorneys' Fees or Litigation Costs shall include all attorneys' fees, litigation costs, and expenses for which Plaintiff and Plaintiff's Counsel could claim under any legal theory whatsoever.

(d) Settlement Administrator Expenses.

Upon completion of the Settlement Administrator's duties under this Agreement, the Settlement Administrator shall pay itself its actual costs in administering the settlement, up to the \$10,000.00 allocated to it for Settlement Administration Expenses.

Section 3.05 Order Approving Settlement and Judgment.

Plaintiff and Defendant will jointly submit, with the documents asking the Court to approve the settlement and this Agreement, an order and judgment based on the Settlement to be entered by the Court granting approval of the PAGA penalties and retaining jurisdiction over all matters relating to the administration, consummation, enforcement, and interpretation of the terms of this Agreement and closing the case after submission of proof by the administrator of the payment of all funds enumerated in the Settlement.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

Defendant denies liability for any claims alleged by Plaintiff on his own behalf or on behalf of the State of California and any of its agencies, including but not limited to the Department of

Industrial Relations, Division of Labor Standards Enforcement, and Labor Workforce and Development Agency, and the Aggrieved Employees upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Action.

Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement or any orders or judgments of the Court entered in connection with this Agreement.

None of the documents produced or created by Plaintiff or the Aggrieved Employees in connection with the claims procedures or claims resolution procedures constitute, and they are not intended to constitute, an admission by Defendant of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

Section 4.02 Non-Evidentiary Use.

Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Action or in any other action or proceeding; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement and to secure its approval by the Court.

Section 4.03 Nullification.

- (a) If the Court should for any reason refuse to approve the payment of PAGA penalties as described in this Agreement, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.
- (b) If the Court does not approve the payment of PAGA penalties as described in this Agreement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are unable to agree on a resolution, the Parties agree to seek the assistance of mediator Gig Kyriacou to resolve any disputes.
- (c) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

Article V.

Release and Waiver of Claims.

Section 5.01 Limited Release of All PAGA Claims Relating to the Action.

Upon the final approval by the Court of this Settlement, Plaintiff and each Aggrieved Employee, shall, for the PAGA Period, fully release and forever discharge Released Parties from the Released Claims that arose during the PAGA Period. It is expressly understood and agreed that this limited release does not release Defendant from liability, if any, to the Aggrieved Employees, including Plaintiff, for any claims that they may assert against Defendant, other than a PAGA claim for penalties. Plaintiff will provide Defendant a general release of all claims in exchange for a separate settlement payment already negotiated by the parties.

Article VI.

Miscellaneous Provisions.

Section 6.01 Voluntariness.

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

Section 6.02 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Plaintiff and Defendant who executed this Agreement and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 6.03 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiff's Counsel, or Counsel for Defendant without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or

to avail any remedy to any other person. Plaintiff expressly warrants that he has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 6.04 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

Section 6.05 Entire Agreement.

This Agreement contains the entire understanding of the Parties hereto in respect to the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action.

Section 6.06 Waiver of Compliance.

Any failure of any Party, and/or Plaintiff's Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.07 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. A scanned

or faxed signature shall be valid as an original signature. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 6.08 Attorneys' Fees and Costs.

Except as expressly provided herein, Defendant and Plaintiff shall each bear their own attorney's fees and costs.

Section 6.09 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, Plaintiff's Counsel and Counsel for Defendant shall meet and confer in an attempt to reach a resolution. If the Parties are unable to reach a resolution, they agree to submit any such dispute(s) to the mediator, Gig Kyriacou. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of law's provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of Los Angeles. The foregoing is only limited to disputes concerning this Agreement and in no way limits or negates the enforceability and effect of underlying arbitration agreements signed by employees of Defendant, specifically including but not limited to Plaintiff, obligating them to arbitrate any and all claims on an individual (and not on a class or collective) basis. Plaintiff, on his own behalf and on behalf of the Aggrieved Employees, and Defendant participated in the negotiation and drafting of this Agreement and had available to them the advice and

assistance of independent counsel. As such, neither Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be construed against the other.

Section 6.10 Fair Settlement

Plaintiff, Defendant, Plaintiff's Counsel, and Counsel for Defendant believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiation, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of law.

Section 6.11 Binding.

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

Section 6.12 Continuing Jurisdiction.

The Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions and obligations of this Agreement.

Section 6.13 Escalator Provision.

Defendant represents that as of August 12, 2021, there were approximately 4,733 pay periods worked by Aggrieved Employees in California during the PAGA Period ("Affected Pay Periods"). If the actual number of Affected Pay Periods is more than 15% greater than this number (i.e., if there are more than 5,443 Affected Pay Periods), Defendant shall at its option either (a) increase the Gross Settlement Amount in proportion to the increase in Affected Pay Periods (e.g., if the number of Affected Pay Periods is 18% greater than 4,733, Defendant will increase the GSA

by 3%) or (b) cut off/cap the Release Period as of the date that the 15% is exceeded.

Article VII.

Confidentiality

Section 7.01 Confidentiality.

Plaintiff and his Counsel agree that they have not and will not publish this Agreement. In response to any inquiries Plaintiff will state that “the case was resolved and it was resolved confidentially.” Plaintiff’s Counsel shall not report this Agreement or its content in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the Aggrieved Employees on their website, and shall not contact any reporters or media regarding the Agreement or its content. However, Plaintiff’s Counsel is authorized to make a limited disclosure to the Court and the LWDA for the purposes of obtaining the approval of the settlement. This disclosure is limited to court filings and electronic submission of settlement documents to the LWDA and neither Plaintiff nor his counsel or representatives are permitted to disseminate or publish, distribute, or discuss the information provided to the Court in those filings outside the filings themselves and any hearing held on those filings, unless ordered otherwise by the Court.

IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth below.

APPROVED AND ACCEPTED.

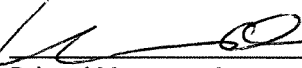
Dated: Oct 21, 2021

JONATHAN HENRY

By: 
Jonathan Henry

Dated: 10/21/2021

DWWCM, INC.

By: 
Printed Name: Glen Quinby
Title: COO

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: October 21, 2021

MESSRELIAN LAW, INC.

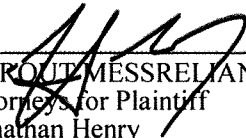
By: 
HAROUT MESSRELIAN
Attorneys for Plaintiff
Jonathan Henry

Exhibit A

[Date], 202__

[Settlement Administrator Name]

[Settlement Administrator Address]

[Employee Name]

[Employee Street Address]

[City, State Zip]

Re: PAGA Settlement Payment

Dear Current or Former DWWCM, INC., d/b/a South Coast Toyota Employee:

You have received this notice because DWWCM, INC., d/b/a South Coast Toyota's ("Employer") records indicate that you work or have worked for Employer in California at some time between March 15, 2019 through [the Approval Date]. This notice relates to the settlement of a lawsuit titled *Jonathan Henry v. DWWCM, INC., et al., Orange County Superior Court Case No. 30-2020-01145799-CU-OE-CXC* (the "Lawsuit").

In the Lawsuit, Plaintiff Jonathan Henry ("Plaintiff") seeks civil penalties pursuant to the California Private Attorneys General Act ("PAGA"), a law which allows a Plaintiff to attempt to recover penalties on behalf of the State of California and on behalf of employees who Plaintiff claims were "aggrieved" by alleged wage and hour violations on the part of Employer.

Employer strongly disputes Plaintiff's allegations and maintains that it has fully complied with all applicable wage and hour laws. The Court has not issued any ruling regarding the merits of the Lawsuit, there has been no finding of liability on the part of the Employer, and Employer does not admit liability on any of the factual or legal allegations made in the Lawsuit. Employer has agreed to settle the Lawsuit solely for economic efficiency. This settlement has been approved by the Court.

The enclosed settlement check represents your portion of the Court-approved PAGA settlement. You will not be retaliated against for cashing your check. Checks that are not cashed within 180 days of issuance will be voided and the funds will be transmitted to the state controller unclaimed payment fund in your name.

Regardless of what you do with the settlement check, you will have released claims for penalties arising under PAGA as asserted in the Lawsuit.

If you have any questions about this notice, please contact the Settlement Administrator, [NAME] at <<number/email>>.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THE LAWSUIT. PLEASE DO NOT CONTACT THE COURT REGARDING THE CASE.

EXHIBIT B

1 CHRISTINE D. BARAN, SBN 158603
ANDREW C. CRANE, SBN 285211
2 FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
3 Irvine, California 92614
Telephone: (949) 851-2424
4 Facsimile: (949) 851-0152

5 Attorneys for Defendant
DWWCM, Inc. dba South Coast Toyota

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7
8 FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

9 JONATHAN HENRY,

10 Plaintiff,

11 v.

12 DWWCM, INC. dba SOUTH COAST
13 TOYOTA and DOES 1 to 25, inclusive,

14 Defendants.

CASE NO.: 30-2020-01145799-CU-OE-CXC
[Unlimited Jurisdiction]

*Assigned for all purposes to the
Judge Randall Sherman, Dept. CX105*

DECLARATION OF MARIA NEWSOM

Complaint Filed: May 26, 2020
Trial Date: Not Yet Set

DECLARATION OF MARIA NEWSOM

I, MARIA NEWSOM, hereby declare and state:

1. I am the Business Manager for Defendant DWWCM, INC., D/B/A SOUTH COAST TOYOTA ("Defendant" or "SCT"), party to this action. The matters stated herein are true and correct to my knowledge.

2. Prior to the year 2019, SCT maintained three sets of tools for its technicians to use to complete their job duties.

3. In or about the year 2019, SCT purchased an additional three sets of tools, bringing the amount of tool sets available to SCT's technicians to six sets.

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

Executed on December 9, 2021 at Costa Mesa, California.


MARIA NEWSOM