

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT

This Private Attorneys General Act Settlement Agreement ("Agreement ") is made by and between Alfredo Hernandez ("Plaintiff"), on behalf of himself and as a proxy/agent for the California Labor and Workforce Development Agency ("LWDA"), and Myers Automotive Group, Inc. ("Defendant") to settle and resolve Plaintiff's lawsuit for civil penalties pursuant to California Labor Code § 2698, *et seq.* ("PAGA") filed against Defendant. Plaintiff and Defendant are collectively referred to herein as the "Parties " and each may be individually referred to as a "Party." This Agreement is made in consideration of the following facts:

A. WHEREAS, on June 2, 2020, Plaintiff filed the action currently pending in the San Diego County Superior Court, entitled *Alfredo Hernandez, et al. vs. Myers Automotive Group, Inc., et al.*, Case No. 37-2020-00017978-CU-WT-CTL (the "Lawsuit"), alleging PAGA cause of actions against Defendant for (1) Disability Discrimination; (2) Failure to Accommodate; (3) No Interactive Process; (4) Retaliation; (5) Failure to Prevent Same; (6) Minimum Wages; (7) Overtime Wages; (8) Meal Periods; (9) Rest Periods; (10) Wage Statements; (11) Waiting Time Penalties; (12) Unfair Competition; (13) Violations of PAGA; and (14) Wrongful Termination.

B. WHEREAS, on June 18, 2020, Plaintiff dismissed, without prejudice, all of his causes of action for individual recovery, leaving only the Thirteenth Cause of Action for PAGA violations. The primary PAGA violations alleged by Plaintiff include overtime wage violations, meal period violations, rest period violations, and derivative wage and hour violations. Plaintiff's PAGA Action is brought on behalf of all individuals employed by Myers Automotive Group, Inc. on an hourly basis in California who worked at any time from March 22, 2019 to June 29, 2021 (the "PAGA Period"). These employees are hereinafter referred to as the "Aggrieved Employees."

C. WHEREAS, on June 29, 2021, the Parties participated in mediation with mediator Denise Asher. The Parties reached a settlement in principle of the PAGA claim and Plaintiff's individual claims for damages. The Parties will execute a separate, confidential settlement agreement for Plaintiff's individual settlement, which includes a general release of claims by Plaintiff.

D. WHEREAS, Defendant denies all of the allegations in the Lawsuit and denies it has committed any misconduct, statutory or regulatory violation, or wrongdoing. The Parties agree that neither the Parties' settlement, this Agreement, nor the acts to be performed or judgments to be entered pursuant to the terms of this Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or law or liability on the claims or allegations in the Lawsuit.

E. WHEREAS, the Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of the claims alleged in Plaintiff's Lawsuit, and that it is the desire and intention of the Parties to effect a final and complete resolution of the Lawsuit.

F. WHEREAS, the Parties have reached a settlement of the claims in the Lawsuit after extensive, arms-length negotiations in a full day private mediation, taking into account all relevant factors, present and potential.

G. WHEREAS, PAGA allows the State to assess and collect civil penalties from employers for violations of certain provisions of the Labor Code. Under PAGA, an "aggrieved employee" may act as a proxy or agent of the State's labor law enforcement agencies and bring a civil action to recover civil penalties on behalf of himself and other employees after giving written notice to the LWDA and the employer of the specific Labor Code provisions alleged to have been violated, and the State thereafter decides not to investigate. Civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the State and 25 percent to the aggrieved employees.

H. WHEREAS, California Labor Code section 2699(1)(2) requires Court review and approval of any settlement of a civil action filed pursuant to PAGA. The Parties agree that the PAGA cause of action in the Lawsuit is not subject to class certification requirements under Code of Civil Procedure Section 382.

THEREFORE, in consideration of the promises and covenants contained herein, the Parties agree as follows:

1. EFFECTIVE DATE: The effective date of this settlement ("Effective Date") shall be the date the Court signs the order approving the PAGA Settlement ("Approval Order").

2. RELEASE OF CLAIMS: Upon the Effective Date, Plaintiff, on behalf of himself and the State of California, and the Aggrieved Employees shall fully release and forever discharge the claims alleged in the Lawsuit arising during the PAGA Period for civil penalties under PAGA that were asserted or could have been asserted based on the facts alleged in the operative Complaint, including claims that Defendant is liable for failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to provide rest periods, failure to provide accurate wage statements, waiting time penalties, or violations of unfair competition law where the foregoing claims arise under Labor Code § 2698, *et seq.*, for the alleged violations of the California Labor Code, including but not limited to sections 201, 202, 203, 204, 210, 223, 226, 226.3, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2699, and all applicable Wage Orders, ("Released Claims"), against Defendant and its past and, present, and future owners, parents, subsidiaries, and all of its current and, former, and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, successors, or assigns, accountants, insurers, or legal representatives ("Released Parties"). Upon entry of the order approving this Agreement and judgment entered thereon, Plaintiff and all Aggrieved Employees will be forever barred from pursuing any and all of the Released Claims that arose during the PAGA Period.

3. SETTLEMENT APPROVAL BY COURT: Plaintiff is represented by Lurtz Legal ("Plaintiff's Counsel"). Plaintiff's Counsel shall prepare and file, with Defendant's approval, a joint motion for approval of the PAGA settlement pursuant to California Labor Code § 2699(1).

Plaintiff's Counsel shall also provide appropriate and timely notice to the LWDA of the settlement.

4. NOTICE TO AGGRIEVED EMPLOYEES:

4.1 No later than ten (10) business days after the Effective Date, Defendant shall provide the Settlement Administrator with a list of all Aggrieved Employees containing each Aggrieved Employee's (1) name; (2) last known home address; (3) number of pay periods as an Aggrieved Employee during the PAGA period; and (4) social security number ("Employee List").

4.2 No later than ten (10) business days after receipt of the Employee List from Defendant, the Settlement Administrator will mail settlement checks and a letter explaining why the check is being sent, substantially in the form attached hereto as **Exhibit A** ("Notice"), to the Aggrieved Employees identified on the Employee List. Prior to mailing the Notices, the Settlement Administrator shall check the addresses provided using the National Change of Address database. Should any of the Notices be returned as undeliverable, the Settlement Administrator will 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) calendar days following receipt of the undeliverable Notice.

5. SETTLEMENT PAYMENT PROCEDURES:

5.1 **Gross PAGA Settlement Fund.** Within fifteen (15) business days after the date the Court signs the Approval Order, and in exchange for the Release set forth in Paragraph 2 above, Defendant shall make a payment to an account designated by the Settlement Administrator in the amount of Forty-Five Thousand Dollars and Zero Cents (\$45,000.00) ("Gross PAGA Settlement Fund") which shall be all inclusive, encompassing (i) all payments to the LWDA and Aggrieved Employees; (ii) costs of third party administration of the settlement; (iii) all attorneys' fees and costs; and (iv) Plaintiff's service award.

5.2 **Attorneys' Fees and Costs.** Defendant will not oppose a request by Plaintiff for attorneys' fees of up to one-third (1/3) of the Gross Settlement PAGA Fund, currently equal to Fifteen Thousand Dollars and Zero Cents (\$15,000.000) ("Attorney Fee"), and costs ("Attorney Cost") as compensation for the reasonable attorney's fees and costs incurred in connection with the work performed to litigate the Lawsuit (collectively, "Attorney Fee/Cost Payment"). The Settlement Administrator will issue an IRS Form 1099 to Plaintiff's Counsel for their respective share of the Attorney Fee/Cost Payment.

5.3 **Settlement Administration Costs.** Defendant will not oppose a request for reimbursement of costs associated with the administration of the Settlement to be paid to the Settlement Administrator ("Administration Costs").

5.4 **Plaintiff's Service Award.** Defendant will not oppose a request for a service award for Plaintiff, in recognition of Plaintiff's efforts in bringing and assisting in the Lawsuit, the amount of Two Thousand Dollars (\$2,000.00) ("Service Award"). The payment will be made on a 1099 basis.

5.5 Net PAGA Settlement Fund. The remaining funds after the Court-approved amounts allocated to the Attorney Fee/Cost Payment, Administration Costs, and Plaintiff's Service Award have been deducted from the Gross PAGA Settlement Fund will be referred to as the "Net PAGA Settlement Fund."

5.5.1 The Net PAGA Settlement Fund shall be allocated as follows: A total of seventy-five percent (75%) of the Net PAGA Settlement Fund shall be paid to the LWDA ("LWDA Payment"). The remaining twenty-five percent (25%) of the Net PAGA Settlement Fund ("Aggrieved Employee Fund") shall be payable to the Aggrieved Employees, and each Aggrieved Employee shall receive a pro rata share of this amount as further detailed in Paragraph 5.6, below.

5.6 Allocation of Aggrieved Employee Fund. Each Aggrieved Employee shall be sent a pro rata share of the Aggrieved Employee Fund ("Individual Settlement Shares") based on the number of pay periods that he or she worked for Defendant in the State of California during the PAGA Period ("Qualifying Pay Periods "). The Individual Settlement Shares shall be calculated as follows:

- First, each Aggrieved Employee's number of Qualifying Pay Periods will be divided by the total number of Qualifying Pay Periods for all Aggrieved Employees, and the resulting figure will be referred to as the "Multiplier."
- Second, each Aggrieved Employee's Multiplier will be applied to the Aggrieved Employee Fund to calculate each employee's dollar share of the Aggrieved Employee Fund.

5.7 Distribution and Taxes. No later than ten (10) business days after receipt of the Employee List from Defendant, the Settlement Administrator shall distribute the Notice and a check to each Aggrieved Employee in the amount of that employee's Individual Settlement Share, and a check in the amount of the LWDA Payment to the LWDA. The Notice sent with the checks to the Aggrieved Employees shall be in substantially the same form as, and contain the same language as, the Notice letter attached hereto as Exhibit A, subject to Court approval. Each Individual Settlement Share, which constitutes payment for civil penalties, shall be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 to the respective Aggrieved Employee and applicable governmental authorities. No later than twenty (20) business days after the Effective Date, the Settlement Administrator shall distribute the Attorneys' Fees and Costs to Plaintiff's Counsel. Within twenty (20) calendar days of distributing all payments required under this Agreement, the Settlement Administrator shall provide to Plaintiff's Counsel and Defendant's Counsel written confirmation verifying that it effected disbursement of the Gross PAGA Settlement Fund pursuant to the terms of this Agreement.

Nothing in this Agreement is intended to constitute legal advice regarding federal, state and/or local tax obligations. Neither Plaintiff nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under

this Agreement. To the extent that this Agreement or any of its attachments is interpreted to contain or constitute advice regarding any U.S. or Federal tax issue, such advice is not intended or written to be used, and cannot be used by any person for the purpose of avoiding penalties under the Internal Revenue Code.

5.8 Expiration of Settlement Checks. Settlement checks issued to Aggrieved Employees pursuant to this Agreement will expire one hundred and eighty (180) days from the date they are issued by the Settlement Administrator. After the expiration of the check cashing period, the Settlement Administrator shall remit any unclaimed funds to the California Unclaimed Property Fund maintained by the California State Controller 's Office with an identification of the Aggrieved Employees and the amounts allocated to each.

5.9 Disputes Relating to Settlement Administration. Any disputes concerning administration of the Settlement which cannot be resolved by the Parties shall be submitted to and resolved by the Court.

5.10. Effect of Judgment: Upon the Court 's entry of the Approval Order and judgment, the Parties agree that this Action will be disposed of.

6. IMPACT OF NON-APPROVAL BY COURT: Should the Court not approve the Agreement, the Parties shall request leave and work jointly to make reasonable efforts to remedy the Agreement in order to obtain the Court's approval. If the Parties cannot resolve the issues identified by the Court in denying approval, the Parties shall be restored to their litigation positions as of June 29, 2021. In order for the Parties to be restored to their litigation positions as of June 29, 2021, either party shall file a written notice with the Court detailing the reasons why any Court identified issues cannot be resolved by reasonable efforts. The written notice shall be filed no earlier than twenty-one (21) days after the Court enters an order denying approval. If the Court ultimately fails to grant approval after the Parties' joint attempt to remedy the issues, or if the Court's approval is reversed or materially modified on appellate review, the Parties' settlement and this Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.

7. ENFORCEMENT AND CONTINUING JURISDICTION OF THE COURT: Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain continuing jurisdiction over the Lawsuit and over all Parties, to the fullest extent to enforce and effectuate the terms and intent of this Agreement. Except as otherwise provided in this Agreement, in the event that one or more of the Parties to this Agreement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the successful Party or Parties shall be entitled to recover reasonable attorneys ' fees and costs incurred in connection with any enforcement actions.

8. REPRESENTATIONS AND WARRANTIES: Each Party to this Agreement also represents and warrants to, and agrees with, each other as follows:

8.1 Each Party has carefully read, and knows and understands the full contents of this Agreement and is voluntarily entering into this Agreement after having received independent

legal advice from his or its attorneys with respect to the advisability of the settlement provided for herein and the advisability of executing this Agreement.

8.2 Each separately-numbered term of this Agreement is contractual, not merely a recital.

8.3 Each Party has participated in the drafting of all provisions of this Agreement, has had an adequate opportunity to read, review, and consider the effect of the language of this Agreement, and has agreed to its terms.

9. NO ADMISSION OF WRONGDOING: Defendant denies that it engaged in any unlawful activity, that it failed to comply with the law in any respect, or that it has any liability to anyone under the claims asserted in the Action. The Parties agree that this Agreement does not constitute an admission by Defendant or any of the Released Parties of any of the matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiff, Defendant or any of the Released Parties.

10. NON-EVIDENTIARY USE: Neither this Agreement nor any of its terms nor the settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff, the LWDA, Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against Plaintiff, the LWDA, or any of the Released Parties in any further proceeding in the Action, except for the purposes of effectuating the settlement pursuant to this Agreement or for Defendant to attempt to establish that an Aggrieved Employee or the LWDA has resolved PAGA claims released through this Agreement.

11. CONFIDENTIALITY: Except as provided below, to the extent necessary to effectuate the Settlement or as required by court or legal process, Plaintiff will keep the terms of this Settlement confidential. Plaintiff shall not issue a press release, hold a press conference, publish information about the Settlement on any website or through any social media or otherwise publicize the Settlement or communicate its terms (including the amount) in public or in private, other than as necessary to obtain Court approval of this Settlement and/or unless otherwise ordered by the Court or required by law. The Parties agree that they will not initiate or have contact with the press, respond to any press inquiry, or have any communication with the press about the Action. Notwithstanding the above, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiff's Counsel may reference the Lawsuit by name and case number in a declaration establishing adequacy as class or representative counsel.

To permit judicial review and approval of the PAGA Settlement, as required by Labor Code Section 2698, et seq., Plaintiff's Counsel will file the Settlement with the Court and submit

the Settlement to the LWDA as part of the Parties' seeking Court approval of the Settlement, pursuant to Lab. Code § 2699(1)(2).

12. CHOICE OF LAW: The rights and obligations of the Parties under this Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California. California law shall govern the interpretation of this Agreement even if a choice of law analysis under state or federal law would dictate that another forum's law be applied.

13. MUTUAL COOPERATION: Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

14. SEVERABILITY: If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, that provision shall be deemed severed and deleted from this Agreement, and neither that provision nor its severance and deletion shall affect the validity of the remaining provisions.

15. SUCCESSORS: This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, assigns, administrators and successors.

16. COOPERATION IN DRAFTING: Given that all Parties hereto had the opportunity to draft, review, and edit the language of this Agreement, no presumption for or against any Party arising out of drafting all or any part of this Agreement may be applied in any action relating to, connected to, or involving this Agreement.

17. COUNTERPARTS AND SIGNATURES: This Agreement may be executed in counterparts. A signature by way of facsimile or email shall serve as an original for all purposes.

18. ENTIRE AGREEMENT: This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. Any modification to this Agreement must be in writing and signed by Plaintiff and an authorized officer of Defendant.

19. SUBMISSION TO LWDA: Pursuant to Labor Code section 2699(1)(2), this Agreement will be submitted to the LWDA at the same time that it is submitted to the Court.

20. NOTICES: All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered personally or mailed, postage prepaid, by first-class mail, to the undersigned persons at their respective addresses as set forth herein:

Counsel for Plaintiff:
LURTZ LEGAL

Marshall R. Lurtz
3511 Camino Del Rio South #101
San Diego, CA 92108
Tel: (619) 299-5343

Counsel for Defendant:
FISHER & PHILLIPS LLP
Christopher Hoffman
Kathryn Evans
4747 Executive Drive, Suite 1000
San Diego, CA 92121
Tel: 858.597.9600
Fax: 858.597.9601

IN WITNESS WHEREOF, the Parties knowingly and voluntarily executed this Private Attorneys General Act Settlement Agreement as of the date set forth below.

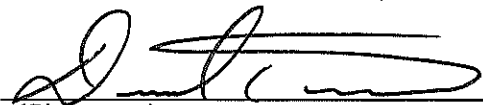
Dated: _____

ALFREDO HERNANDEZ

By: _____
Alfredo Hernandez

Dated: 11/29/21

MYERS AUTOMOTIVE GROUP, INC.

By: 
(Signature)

Daniel Earl Myers
(Printed Name)

General Manager
(Title)

APPROVED AS TO FORM:

Dated: _____

LURTZ LEGAL

By: _____
Marshall R. Lurtz
Attorney for Plaintiff

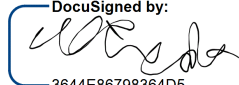
Marshall R. Lurtz
3511 Camino Del Rio South #101
San Diego, CA 92108
Tel: (619) 299-5343

Counsel for Defendant:
FISHER & PHILLIPS LLP
Christopher Hoffman
Kathryn Evans
4747 Executive Drive, Suite 1000
San Diego, CA 92121
Tel: 858.597.9600
Fax: 858.597.9601

IN WITNESS WHEREOF, the Parties knowingly and voluntarily executed this Private Attorneys General Act Settlement Agreement as of the date set forth below.

Dated: 12/11/2021

ALFREDO HERNANDEZ

By: 
3644E86798364D5...
Alfredo Hernandez

Dated: _____

MYERS AUTOMOTIVE GROUP, INC.

By: _____
(Signature)

(Printed Name)

(Title)

APPROVED AS TO FORM:

Dated: 12/13/2021

LURTZ LEGAL

By: 
C4A6B9ABFECD40A...
Marshall R. Lurtz
Attorney for Plaintiff

Dated: December 15, 2021

FISHER & PHILLIPS LLP

By: 

Christopher Hoffman
Kathryn Evans
Attorneys for Defendant

EXHIBIT A

<<SETTLEMENT ADMINISTRATOR INFORMATION>>

<<DATE>>

<<FIRST NAME>> <<LAST NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment From *Hernandez v. Myers Automotive Group, Inc.* San Diego County Superior Court Case No. 37-2020-00017978-CU-WT-CTL

Dear <<FIRST NAME>> <<LAST NAME>>:

The San Diego Superior Court (the "Court") has approved a settlement in the above-captioned action filed by Alfredo Hernandez ("Plaintiff") on behalf of himself and all other aggrieved employees.

Enclosed you will find a check made payable to you. This is your payment from the settlement of the action. The action was filed against Myers Automotive Group, Inc. ("Defendant") pursuant to the California Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* (called "PAGA"). The lawsuit was brought on behalf of the State of California and all hourly individuals employed by Defendant who worked at any time from March 22, 2019 to June 29, 2021 ("Aggrieved Employees"). You are receiving this notice because you have been identified as an Aggrieved Employee.

The Plaintiff in the case claimed that Defendant owed penalties under PAGA for certain violations of the California Labor Code. Each individual PAGA payment was calculated on a pro rata basis (*i.e.*, proportional) based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period. Your individual PAGA payment has been calculated at **\$[AMOUNT PAID TO THIS EMPLOYEE]**. Your payment is enclosed with this Notice. This payment is made on a 1099 basis, and you will be solely responsible for any taxes payable on the amount you received.

The Court has approved the Parties Settlement Agreement ("Settlement"). By operation of the Settlement's terms, all Aggrieved Employees, including you, release Defendant and its past, present, and future owners, parents, subsidiaries, and all of their current, former, and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives from any and all claims, rights, demands, liabilities and causes of action for civil penalties under the California Labor Code Private Attorney General Act, Labor Code §§ 2698 *et seq.* (the "PAGA") alleged in the lawsuit or that could have been pled based on factual allegations pled in the operative complaint in the case, arising during the periods of March 22, 2019 to June 29, 2021, including but not limited to any PAGA-based claims for claims that Defendant is liable for failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to provide rest periods, failure to provide accurate wage statements, waiting time penalties, or violations of unfair competition law where the foregoing claims arise under Labor Code § 2698, *et seq.*, for the alleged violations of the California Labor Code, including but not limited to sections 201, 202, 203, 204, 210, 223, 226, 226.3, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2699, and all applicable Wage Orders.

The Court has ***not*** made a determination about the merits of Plaintiff's claims. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of Plaintiff's claims.

Defendant denies Plaintiff's allegations. Defendant maintains that it was in compliance with the California Labor Code at all times and enters into this Settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

If you have any questions, you can contact the Settlement Administrator (whose contact information is at the top of this letter).