

Joseph Lavi (SBN 209776)
Vincent C. Granberry (SBN 276483)
Anwar D. Burton (SBN 327850)
Melissa A. Huether (SBN 316604)
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Blvd., Suite 200
Beverly Hills, CA 90211
T: (310) 432-0000
E: jlavi@lelawfirm.com
E: vgranberry@lelawfirm.com
E: aburton@lelawfirm.com
E: mhuether@lelawfirm.com

Attorneys for Plaintiff, GILBERTO ROSALES on behalf of himself and others similarly situated

Norris J. Bishton, Jr., Esq.
Jeffrey S. Gubernick, Esq.
BISHTON & GUBERNICK
6701 Center Drive West, Ste. 925
Los Angeles, CA 90045-1570
E: jeff@bishgub.com

*Attorneys for Defendants, FOX HILLS AUTO, INC.;
FOX HILLS AUTO INC. DBA AIRPORT MARINA FORD*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

GILBERTO ROSALES, on behalf of
himself and others similarly situated,

PLAINTIFF,

vs.

FOX HILLS AUTO, INC.; FOX HILLS
AUTO INC. DBA AIRPORT MARINA
FORD; NJB INVESTMENTS, INC.; NJB
INVESTMENTS, INC. DBA NOARUS
AUTO GROUP and DOES 1 to 100,
Inclusive,

DEFENDANTS.

CASE NO. 20STCV16964
[Unlimited Jurisdiction - PAGA]

*ASSIGNED FOR ALL PURPOSES TO THE
HON. RICHARD J. BURDGE, DEPT. 37*

**JOINT STIPULATION OF SETTLEMENT
PAGA ACTION**

Complaint: May 5, 2020
Trial Date: July 5, 2022

1 This Joint Stipulation of Settlement of PAGA Action is made by and between the
2 Plaintiff, Gilberto Rosales (“Plaintiff”), on his own behalf and on behalf of all members of the
3 PAGA Group, as defined below, on the one hand, and Fox Hills Auto, Inc. and Fox Hills Auto
4 Inc. dba Airport Marina Ford (“Defendants”) on the other hand (collectively the “Parties”), in
5 the lawsuit entitled *Gilberto Rosales, on behalf of himself and others similarly situated v. Fox*
6 *Hills Auto, Inc., et al. and Does 1 to 100*, filed in Los Angeles County Superior Court, Case No.
7 20STCV16964. This Joint Stipulation of Settlement of PAGA Action resolves all claims that
8 were asserted or could have been asserted against Defendants arising out of the facts alleged in
9 the Action.

10 **I. DEFINITIONS**

11 **A. Action.** The term “Action” as used herein means the action entitled filed in Los
12 Angeles County Superior Court, Case No. 20STCV16964.

13 **B. Administrative Costs.** All administrative costs of settlement, including cost of
14 notice to the PAGA Group, administration, and any fees and costs incurred or charged by the
15 Settlement Administrator in connection with the execution of its duties under this Joint
16 Stipulation of Settlement of PAGA Action.

17 **C. Agreement.** The terms “Agreement” or “Settlement Agreement” are used
18 synonymously herein to mean this Joint Stipulation of Settlement of PAGA Action for purposes
19 of resolution.

20 **D. Court.** The term “Court” as used herein means the Superior Court of the State
21 of California for the County of Los Angeles.

22 **E. Date of Approval.** The terms “Date of Approval” or “Approval” as used herein
23 mean the date of the PAGA Settlement Approval Hearing.

24 **F. Defendants.** The term “Defendants” as used herein means: Fox Hills Auto, Inc.
25 and Fox Hills Auto Inc. dba Airport Marina Ford.

26 **G. Defense Counsel.** The term “Defense Counsel” as used herein means: Bishton
27 & Gubernick who are counsel for and acting on behalf of Defendants.

28 **H. LWDA.** The term “LWDA” means the Labor Workforce Development Agency.

1 **I. LWDA Payment.** The term “LWDA Payment” as used herein means seventy-
2 five percent (75%) of the Net Settlement Amount which will be distributed to the LWDA in
3 accordance with California Labor Code section 2699(i).

4 **J. Net Settlement Amount.** The term “Net Settlement Amount” as used herein
5 means the Settlement Amount minus any award of attorneys’ fees and litigation costs and
6 Administrative Costs.

7 **K. Net Settlement Payments.** The term “Net Settlement Payment(s)” shall include
8 payments made to the PAGA Group.

9 **L. Notice of Resolution.** The Notice of PAGA Resolution is the document attached
10 hereto as Exhibit “A.”

11 **M. PAGA Group or Aggrieved Employee(s).** The PAGA Group is defined as: All
12 persons within the State of California who are or were employed by Defendants as hourly, non-
13 exempt employees in the State of California at any time within the PAGA Period.

14 **N. PAGA Group Portion.** The PAGA Group Portion shall mean the remaining
15 twenty-five percent (25%) of the Net Settlement Amount designated to the PAGA Group. The
16 PAGA Group Portion will be distributed to the PAGA Group on a *pro rata* basis based on his
17 or her number of pay periods during the PAGA Period.

18 **O. PAGA List.** A list of the Aggrieved Employees including: (1) name; (2) last
19 known home address; (3) number of pay periods as a PAGA Group member during the PAGA
20 period (and any other employment information that may be necessary to calculate each PAGA
21 Group Members Net Settlement Payment); and (4) social security number.

22 **P. PAGA Period.** The term “PAGA Period” or “Settlement Period” shall refer to the
23 time period from February 26, 2019 through the date that the Court enters an order approving the
24 Settlement.

25 **Q. Plaintiff.** The term “Plaintiff” as used herein means Gilberto Rosales. The term
26 Plaintiff shall be used synonymously with the term “PAGA Representative”.

27 **R. Plaintiff’s Counsel.** The term “Plaintiff’s Counsel” as used herein means: LAVI
28 & EBRAHIMIAN, LLP who are counsel for and acting on behalf of Plaintiff.

1 **S. Settlement Administrator.** The term “Settlement Administrator” as used herein
2 means ILYM Group, Inc., which will be responsible for the administration of the Settlement
3 Payment, as defined below, and all related matters.

4 **T. Settlement Agreement.** The terms “Settlement Agreement” or “Agreement” are
5 used synonymously herein to means this Joint Stipulation of Settlement of PAGA Action.

6 **U. Settlement Amount.** The terms “Settlement Amount” and “Gross Settlement
7 Fund” as used herein mean a fund in the sum of Two Hundred Forty Thousand Dollars and Zero
8 Cents (\$240,000.00) which shall be paid by Defendants, and from which all Net Settlement
9 Payments, Court approved attorneys’ fees and litigation costs pursuant to Section X,
10 Administrative Costs pursuant to Section VI, and distribution to the LWDA pursuant to Section
11 VIII(C) shall be paid, except as provided herein. The Settlement Amount is for approximately
12 7,526 pay periods during the PAGA period. In the event the actual number of the pay periods
13 during the PAGA period increase by more than 10% from the 7,526 pay periods, the Settlement
14 Amount shall increase proportionately over the 10%, i.e. meaning that if the total pay periods
15 increased by 11%, the Settlement Amount will increase by 1%.

16 **II. BACKGROUND**

17 **A.** On February 26, 2020, Plaintiff submitted a letter to the LWDA alleging
18 violations of wage and hour laws including failure to pay all minimum wages, failure to pay all
19 overtime wages, failure to provide meal breaks, failure to provide rest breaks, failure to provide
20 accurate wage statements, and failure to timely pay final wages. On May 4, 2020, Plaintiff filed
21 the Action alleging a single case of action for penalties pursuant to Labor Code § 2699(f) for
22 alleged violations and penalties under Labor Code §§2699(f), 201, 202, 203, 226, 226.7, 510,
23 and 512, as well as the IWC Wage Order. In the Action, Plaintiff alleges that Defendants failed
24 to provide meal breaks and failed to authorize and permit legally compliant rest breaks each day
25 and failed to provide premium pay for the alleged meal and rest break violations. Plaintiff further
26 alleges that minimum, overtime and double time wages were not properly paid. Moreover,
27 Plaintiff alleges that the employees received inaccurate wage statements and were not paid all
28 wages owed upon termination and/or resignation.

1 **B.** Following the filing of the action, counsel for the Parties met and conferred with
2 respect to the potential settlement of the Action. Pursuant to these discussions, the Parties agreed
3 to exchange informal discovery and engage in private mediation. The Parties subsequently
4 exchanged informal discovery, including: a substantial sampling of the timekeeping and payroll
5 records of the PAGA Group; information and documentation concerning the claims set forth in
6 the Action, such as Defendants' employee handbooks and policies and procedures regarding the
7 payment of wages, meal and rest breaks, and time keeping; information regarding the number
8 of putative PAGA Group members and the number of current versus former employees; and the
9 total workweeks and pay periods worked by the PAGA Group.

10 **C.** Plaintiff and Plaintiff's Counsel have engaged in good faith, arms-length
11 negotiations. On July 28, 2021, the Parties participated in a mediation before mediator Hon. Lisa
12 Hart Cole (Ret.) and reached a resolution of this matter, subject to the Approval of the Court,
13 and finalization of a formal Joint Stipulation of Settlement of PAGA Action. The Parties have
14 now entered into a more detailed, formalized Settlement Agreement for submission to the Court
15 for Approval.

16 **D.** Plaintiff's Counsel has conducted an investigation of the law and facts relating
17 to the claims asserted in the Action and has concluded, taking into account the sharply contested
18 issues involved, the expense and time necessary to pursue the Action through trial and any
19 appeals, the risks and costs of further prosecution of the Action, the risk of an adverse outcome,
20 the uncertainties of complex litigation, and the substantial benefits to be received by the Named
21 Plaintiff and the members of the PAGA Group pursuant to this Agreement, that a settlement
22 with Defendants on the terms and conditions set forth herein is fair, reasonable, adequate, and
23 in the best interests of the PAGA Group. Plaintiff, on his own behalf and as a representative
24 pursuant to PAGA, has agreed to settle the Action with Defendants on the terms set forth herein.

25 **E.** Defendants have concluded that, because of the substantial expense of defending
26 against the Action, the length of time necessary to resolve the issues presented herein, the
27 inconvenience involved, and the concomitant disruption to their business operations, it is in its
28 best interests to accept the terms of this Agreement. Defendants deny each of the allegations and

1 claims asserted against it in the Action. However, Defendants nevertheless desires to settle the
2 Action for the purpose of avoiding the burden, expense and uncertainty of continuing litigation
3 and for the purpose of putting to rest the controversies engendered by the Action.

4 **F.** This Agreement is intended to and does effectuate the full, final and complete
5 resolution of all allegations and claims that were asserted, or could have been asserted, in the
6 Action by Plaintiff.

7 **III. JURISDICTION**

8 The Court has jurisdiction over the Parties and the subject matter of this Action. The
9 Action includes claims that, while Defendants deny them in their entirety, would, if proven,
10 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
11 Approval of the resolution, pursuant to California Code of Civil Procedure Section 664.6, the
12 Court shall retain jurisdiction of this action solely for the purpose of interpreting, implementing,
13 and enforcing this Joint Stipulation of Settlement of PAGA Action consistent with the terms set
14 forth herein, and the Parties and their counsel submit to the jurisdiction of the Court for purposes
15 of interpreting, implementing and enforcing this Agreement and all orders and judgments
16 entered in connection therewith.

17 **IV. STATEMENT OF NO ADMISSION**

18 **A.** Defendants deny liability to Plaintiff and to the PAGA Group upon any claim or
19 cause of action. This Agreement does not constitute, and is not intended to constitute, an
20 admission by Defendants as to the merits, validity, or accuracy of any of the allegations or claims
21 made against it in the Action.

22 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor
23 any statements, discussions or communications, nor any materials prepared, exchanged, issued
24 or used during the course of the negotiations leading to this Agreement, is intended by the Parties
25 to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible
26 in any way in this case or any other judicial, arbitral, administrative, investigative or other forum
27 or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
28 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties

1 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this
2 case or any other judicial, arbitral, administrative, investigative or other forum or proceeding,
3 as purported evidence of any violation of any federal, state, or local law, statute, ordinance,
4 regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other
5 purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before
6 the Court that has as its purpose the interpretation, implementation, or enforcement of this
7 Agreement or any orders or judgments of the Court entered in connection with the resolution.
8 In addition, this Agreement may be introduced, used, or admitted in any pending or future action
9 seeking PAGA damages.

10 C. None of the documents produced or created by Plaintiff or the PAGA Group in
11 connection with the claims procedures or claims resolution procedures constitute, and they are
12 not intended to constitute, an admission by Defendants of any violation of any federal, state, or
13 local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law
14 or in equity.

15 D. Nothing in this Agreement will be construed as an admission or
16 acknowledgement of any kind that any group should or would be given collective treatment in
17 the Action or in any other action or proceeding. Further, neither this Agreement nor the Court's
18 actions with regard to this Agreement will be admissible in any court or other tribunal regarding
19 the propriety of collective treatment. In the event that this Agreement is not approved by the
20 Court or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiff will
21 not be deemed to have waived, limited or affected in any way any claims, rights or remedies in
22 the Action, and Defendants will not be deemed to have waived, limited, or affected in any way
23 any of their objections or defenses in the Action.

24 **V. RELEASE, DISMISSAL, AND CONFIDENTIALITY**

25 **A. Release as to PAGA Claims.**

26 Upon Approval by the Court of this Settlement and Defendants full funding of the
27 Settlement Amount, Plaintiff, as a representative of the State of California, the PAGA Group,
28 and the State of California will release and forever discharge any and all claims and causes of

1 action, known or unknown, contingent or accrued, against Defendants, Defendants' parents,
2 subsidiaries, affiliates, their insurers, attorneys, shareholders, executives, managers, and all
3 agents thereof (collectively "Released Parties"), arising out of the facts and claims asserted in
4 the Action for civil penalties under the Private Attorney General Act of 2004 Cal. Lab. Code §
5 2698 based upon the facts alleged, for violations of the California Labor Code governing: meal
6 and rest breaks; unpaid wages, including minimum wages, regular wages, overtime, and double
7 time wages, and all theories for or related to nonpayment of such wages; wage statement
8 violations; separation pay violations; and any other penalties which could be asserted based on
9 the allegations alleged against Defendants in Plaintiff's LWDA letter and the Action (the
10 "Released Claims"). As a result of this release, the PAGA Group will be unable to bring a claim
11 under PAGA, or recover civil penalties under any pending PAGA lawsuit, for any of the
12 Released Claims that arose during the Settlement Period.

13 **B. Publicity.**

14 The Plaintiff agrees that he has not and will not publish the Settlement. By way of this
15 settlement, Plaintiff directs his counsel not to issue any press releases or press statements
16 regarding the Settlement, identify Defendants or Defense Counsel by name in any media
17 including Plaintiff's Counsel's website, or have any communications with the press or media
18 about the Action or the Settlement. However, nothing in the provision shall be construed from
19 as preventing the Parties from taking following actions: (a) Plaintiff's counsel shall be allowed
20 to refer to the Action and Settlement in other litigations to support their adequacy as attorneys
21 for a putative class or PAGA group or to justify an award of attorneys' fees; (b) the Parties shall
22 have the right to disclose the Resolution as may be required under federal or state tax and/or
23 securities laws or under Generally Accepted Accounting Principles; (c) the Parties shall have
24 the right to disclose the Settlement to third parties without identifying the case name, case
25 number, or names of any of the Parties or Released Parties; (d) the Parties may refer to the
26 Resolution, describe its terms, and file the settlement agreement with the Court, the LWDA, and
27 the Settlement Administrator in connection with any proceedings which are reasonably
28 necessary to obtain Approval of the Settlement; (e) the Parties or their representatives may

1 communicate with accountants or legal advisors regarding the Settlement; and (f) the Released
2 Parties may disclose the Settlement in any pending or future action seeking PAGA damages.
3 Except for the previously listed exceptions, in response to any inquiries about the Action, the
4 Parties may state that “the matter has been resolved.”

5 **VI. SETTLEMENT ADMINISTRATOR**

6 Plaintiff and Defendants, through their respective counsel, have selected ILYM Group,
7 Inc. as the Settlement Administrator to administer the Settlement, which includes but is not
8 limited to distributing and responding to inquiries about the Notice of PAGA Resolution and
9 calculating all amounts to be paid from the Net Settlement Fund. Charges and expenses of the
10 Settlement Administrator, estimated to be Six Thousand Dollars (\$6,000.00), will be paid from
11 the Settlement Amount. Any charges and expenses of the Settlement Administrator greater than
12 the allocated Six Thousand Dollars (\$6,000.00) will come from the Settlement Amount. If the
13 actual Settlement Administrator fees are less than the Parties’ estimation, the difference between
14 the actual and estimated Settlement Administrator fees will be included in the Net Settlement
15 Amount.

16 **VII. NOTICE**

17 **A.** Plaintiff and Defendant, through their respective attorneys, have jointly prepared
18 a Notice of PAGA Resolution, in the form attached hereto as “**Exhibit A**” which in substance
19 will be provided to the members of the PAGA Group as follows:

20 (1) As soon as practicable following Approval of the Settlement, but no later
21 than fifteen (15) calendar days after the Court’s Approval, Defendants will provide to the
22 Settlement Administrator the PAGA List.

23 (2) The Settlement Administrator shall run all the addresses provided through
24 the United States Postal Service NCOA database (which provides updated addresses for any
25 individual who has moved in the previous four years who has notified the U.S. Postal Service of
26 a forwarding address) to obtain current address information.

27 (3) Within twenty-one (21) calendar days after the Settlement Administrator’s
28 receipt of the PAGA List, the Settlement Administrator will mail the Notice of PAGA Resolution

1 together with a settlement payment to all PAGA Group members by first-class United States
2 mail, postage prepaid, with directions to the Postmaster to forward the Notice and return all
3 undeliverable Notices to the Settlement Administrator. For each Notice of PAGA Resolution and
4 settlement payment that is returned as undeliverable, the Settlement Administrator shall promptly
5 attempt to locate the Aggrieved Employee by performing an additional skip trace and shall re-
6 mail the Notice of PAGA Resolution and settlement check no later than ten (10) calendar days
7 following receipt of the undeliverable Notice of PAGA Resolution.

8 (4) The Notice of PAGA Resolution will be provided in English.

9 **VIII. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

10 **A. Distribution Formula.**

11 (1) Members of the PAGA Group will receive a lump sum payment in an
12 amount determined by the Settlement Administrator in accordance with the provisions of this
13 Agreement.

14 (2) The lump sum payment to each member of the PAGA Group will be
15 determined by dividing the Net Settlement Amount by the total number of pay periods worked
16 by all members of the PAGA Group during the Settlement Period (the "Pay Period Amount")
17 and then multiplying the Pay Period Amount by the number of pay periods worked by the
18 individual PAGA member.

19 **B. Funding of Resolution.**

20 (1) The funding of the Settlement Amount will be completed at one time with
21 funds provided to and escrowed by the Settlement Administrator. The funds used for the
22 Settlement Amount shall be paid to the Settlement Administrator by Defendants within twenty
23 (20) calendar days of the date the Order approving the Settlement becomes final. Such Order
24 becomes final upon the later of: (a) provided that no appeal from the Order approving the
25 Settlement is filed, the day after the deadline for any appeals expires (i.e., 60 days from when
26 the Order is entered); (b) if an appeal of the Order is filed, and the appeal is finally disposed of
27 by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further
28 review of the Court of Appeal's decision passes, and no further review is requested; or (c) if an

1 appeal of the Order is filed and there is a final disposition by ruling, dismissal, denial, or
2 otherwise by the Court of Appeal, and review of the Court of Appeal's decision is requested, the
3 day after the request for review is denied with prejudice and/or no further review of the Order
4 can be requested.

5 (2) If a PAGA Group member is deceased at the time of distribution, the
6 Settlement Administrator shall distribute the deceased PAGA Group member's Net Settlement
7 Payment to the deceased PAGA Group member's legal heir(s). In the event of a dispute as to
8 the legal heir(s), the Settlement Administrator shall notify the executor of the deceased PAGA
9 Group member's estate and attempt to place the deceased PAGA Group member's payment in
10 escrow or similar disposition such that any competing heirs may take whatever action they wish
11 to resolve ultimate disposition of such money and the Settlement Administrator and the Parties
12 hereto may disclaim any further interest in or obligation in relation to such money.

13 (3) If a check is returned to the Settlement Administrator as undeliverable,
14 the Settlement Administrator shall promptly attempt to obtain a valid mailing address by
15 performing a skip trace search and, if another address is identified, shall mail the check to the
16 newly identified address. If the Settlement Administrator is unable to obtain a valid mailing
17 address through this process, the monies represented by the check shall be turned over according
18 to the below procedures.

19 (4) Settlement checks will specifically indicate that they are void if not
20 negotiated within one hundred eighty 180 days of their issuance. Any settlement checks that
21 remain uncashed one hundred eighty (180) or more calendar days after issuance by the
22 Settlement Administrator shall be voided. The Settlement Administrator will remit the entire
23 amount of each PAGA Group member's uncashed Net Settlement Payment to the California
24 State Controller for deposit in the Unclaimed Property Fund in the name of the PAGA Group
25 member to whom the uncashed Net Settlement Payment was drafted.

26 **C. Time for Distribution of the Attorneys' Fees, Costs and LWDA Payment.**

27 The Settlement Administrator shall cause the Court approved attorneys' fees, litigation
28 costs and LWDA Payment to be paid at the same time and manner as the Settlement Payments

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1 to the PAGA Group.

2 **IX. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

3 The amounts paid under this Agreement do not represent a modification of any
4 previously credited hours of service under any employee benefit plan, policy or bonus program
5 sponsored by Defendants. Such amounts will not form the basis for additional contributions to,
6 benefits under, or any other monetary entitlement under, benefit plans (self-insured or not)
7 sponsored by Defendants, policies or bonus programs. Any payments made under the terms of
8 this Settlement shall not be applied retroactively, currently or on a going forward basis as salary,
9 earnings, wages, or any other form of compensation for the purposes of Defendants' benefit
10 plan, policy or bonus program. Defendants retain the right to modify the language of its benefit
11 plans, policies and bonus programs to effect this intent and to make clear that any amounts paid
12 pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any
13 similar measuring term as defined by applicable plans, policies and bonus programs for purpose
14 of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or
15 benefits are not required by this Settlement.

16 **X. PLAINTIFF'S COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

17 Defendants shall not oppose an application by Plaintiff's Counsel to receive, and
18 Plaintiff's Counsel shall not seek or receive, an amount in excess of Eighty Thousand Dollars
19 and Zero Cents (\$80,000.00) which represents 33 1/3% of the Settlement Amount for all past
20 and future attorneys' fees necessary to prosecute, settle, and administer the Action and this
21 Settlement. In the event that the escalator clause in section I.U. herein is triggered and the
22 Settlement Amount is increased, Plaintiff's Counsel has, at their discretion, the option to
23 increase their attorneys' fees in order to remain at 33 1/3% of the Settlement Amount.
24 Additionally, Defendants shall not oppose an application by Plaintiff's Counsel to receive, and
25 Plaintiff's Counsel shall not seek or receive, an amount in excess of Fifteen Thousand Dollars
26 (\$15,000.00), which represents all past and future litigation costs and expenses necessary to
27 prosecute, settle and administer the Action and this Settlement. Any attorneys' fees or litigation
28 costs awarded to Plaintiff's Counsel by the Court shall be deducted from the Settlement Amount

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1 for the purpose of determining the Net Settlement Amount. This amount shall include all
2 attorneys' fees and litigation costs and expenses for which Plaintiff and Plaintiff's Counsel could
3 claim under any legal theory whatsoever. Should the Court approve a lesser percentage or
4 amount of fees and/or litigation costs than the amount that Plaintiff's Counsel ultimately seeks,
5 then the unapproved portion or portions shall revert to the Net Settlement Amount.

6 **XI. TAXATION AND ALLOCATION**

7 **A.** For withholding tax characterization purposes and payment of taxes, the Net
8 Settlement Amount shall be deemed and is allocated by the Parties as follows: 100% as
9 penalties.

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

13 **C.** Nothing in this Settlement is intended to constitute legal advice regarding
14 federal, state, and/or local tax obligations. The Parties, Defense Counsel and Plaintiff's Counsel
15 make no representations as to the tax treatment or legal effect of the payments called for
16 hereunder, and Aggrieved Employees are not relying on any statement or representation by the
17 Parties, Plaintiff's Counsel or Defense Counsel in this regard. Aggrieved Employees understand
18 and agree that they will be responsible for the payment of any employee taxes and penalties
19 assessed on the payment described herein and will hold the Parties, Plaintiff's Counsel and
20 Defense Counsel free and harmless from and against any claims, liabilities, costs and expenses,
21 including attorney's fees, resulting in any way from personal tax treatment of the payments
22 made pursuant to this Agreement. To the extent that this Settlement or any of its attachments is
23 interpreted to contain or constitute advice regarding any state or federal tax issue, such advice
24 is not intended or written to be used, and cannot be used, by any person for the purpose of
25 avoiding penalties under the Internal Revenue Code. Neither the Parties, Plaintiff's Counsel nor
26 Defense Counsel are responsible for any Aggrieved Employee's tax obligations regarding the
27 allocation of the settlement payments.

1 **XII. COURT APPROVAL**

2 This Agreement and the Resolution is contingent upon Approval by the Court. Plaintiff
3 and Defendants agree to take all steps as may be reasonably necessary to secure Approval of the
4 Resolution, to the extent not inconsistent with the terms of this Agreement, and will not take
5 any action adverse to each other in obtaining Court Approval of the Resolution in all respects.

6 **XIII. APPRISAL AND CERTIFICATION BY THE SETTLEMENT**
7 **ADMINISTRATOR.**

8 The Settlement Administrator shall keep Plaintiff's Counsel and Defense Counsel
9 apprised of all distributions from the Settlement Amount. Upon completion of administration of
10 the Settlement, the Settlement Administrator shall provide written certification of such
11 completion to Plaintiff's Counsel and Defense Counsel. The Settlement Administrator shall also
12 provide Defense Counsel with a final accounting, including the names of payees and Net
13 Settlement Payments.

14 **XIV. MISCELLANEOUS PROVISIONS**

15 **A. Stay of Action.**

16 Named Plaintiff and Defendants agree to the stay of all discovery in the Action, pending
17 Approval of the Resolution by the Court.

18 **B. Interpretation of This Agreement.**

19 (1) This Agreement constitutes the entire agreement between Plaintiff and
20 Defendants. Except as expressly provided herein, this Agreement has not been executed in
21 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
22 written representations or terms shall modify, vary or contradict its terms. In entering into this
23 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
24 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
25 enforced under the laws of the State of California, both in its procedural and substantive aspects,
26 without regard to its conflict of laws provisions. Any claim arising out of or relating to this
27 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
28 Court of the State of California for the County of Los Angeles, and Plaintiff and Defendants

1 hereby consent to the personal jurisdiction of the Court over them solely in connection
2 therewith. The foregoing is only limited to disputes concerning this Agreement and in no way
3 limits or negates the enforceability and effect of the underlying arbitration agreements signed
4 by employees of Defendants, specifically including but not limited to Plaintiff, obligating them
5 to arbitrate any and all claims on an individual (and not on a class, collective, or representative)
6 basis.

7 (2) Plaintiff, on his own behalf and on behalf of the PAGA Group, and
8 Defendants participated in the negotiation and drafting of this Agreement and had available to
9 them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendants
10 may claim that any ambiguity in this Agreement should be construed against the other.

11 (3) The terms and conditions of this Agreement constitute the exclusive and
12 final understanding and expression of all agreements between Plaintiff and Defendants with
13 respect to the settlement of the Action. This Agreement may be modified only by a writing
14 signed by counsel for all Parties or their successors-in-interest.

15 **C. Further Cooperation.**

16 Plaintiff and Defendants and their respective counsel shall proceed diligently to prepare
17 and execute all documents, to seek Approval from the Court, and to do all things reasonably
18 necessary or convenient to consummate this Agreement as expeditiously as possible.

19 **D. Confidentiality of Documents.**

20 Plaintiff, and the Settlement Administrator, shall maintain the confidentiality of all
21 documents, deposition transcripts, declarations and other information obtained in the lawsuit,
22 unless necessary for appeal or such documents are ordered to be disclosed by the Judge or by a
23 subpoena.

24 **E. Counterparts.**

25 This Agreement may be executed in one or more actual or non-original counterparts, all
26 of which will be considered one and the same instrument and all of which will be considered
27 duplicate originals. This Agreement may be signed electronically or by facsimile, and an
28 electronic or facsimile signature is deemed valid and binding, and triggers all rights and

obligations under this Agreement.

F. Authority.

Each individual signing below warrants that he or she has or they have the authority to execute this Agreement on behalf of the party for whom or which that individual signs.

G. No Third-Party Beneficiaries.

Named Plaintiff, members of the PAGA Group, Defendants and Released Parties are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

H. Force Majeure.

The failure of any party to perform any of its obligations hereunder shall not subject such party to any liability or remedy for damages, or otherwise, where such failure is occasioned in whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions, floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages, shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any other similar or different circumstances or causes beyond the reasonable control of such party.

I. Deadlines Falling on Weekends or Holidays.

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal/court holiday, that deadline shall be continued until the following business day.

J. Severability.

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and Plaintiff's Counsel, on behalf of the Parties and the PAGA Group, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

K. Defendants' Fees and Costs

All of Defendants' own legal fees, costs and expenses incurred in this Action shall be borne by Defendants.

1 APPROVED AS TO CONTENT

2 DATE: _____, 2021
3 october 26, 2021

DocuSigned by:

Gilberto Rosales

C17ACDA0D3FB42A...

GILBERTO ROSALES

5 DATE: _____, 2021

By:

For: FOX HILLS AUTO, INC.

9 DATE: _____, 2021

By:

For: FOX HILLS AUTO INC. DBA
AIRPORT MARINA FORD

13 APPROVED AS TO FORM

14 DATE: _____, 2021
15 october 26, 2021

LAVI & EBRAHIMIAN, LLP

By:

DocuSigned by:

Joseph Lavi

871E0169FCF244D...

Joseph Lavi

Vincent C. Granberry

Anwar D. Burton

Melissa A. Huether

Attorneys for Plaintiff

21 DATE: _____, 2021

BISHTON & GUBERNICK

By:

Norris J. Bishton, Jr.

Jeffrey S. Gubernick

Attorneys for Defendant

DS

GR

1 APPROVED AS TO CONTENT

2 DATE: _____, 2021

3 GILBERTO ROSALES

4
5 DATE: 11-03, 2021



6 By:

7 For: FOX HILLS AUTO, INC.

8
9 DATE: 11-03, 2021



10 By:

11 For: FOX HILLS AUTO INC. DBA
12 AIRPORT MARINA FORD

13 APPROVED AS TO FORM

14 DATE: _____, 2021

15 LAVI & EBRAHIMIAN, LLP

16
17 By:

18 Joseph Lavi
19 Vincent C. Granberry
20 Anwar D. Burton
21 Melissa A. Huether
22 Attorneys for Plaintiff

23
24 DATE: November 2, 2021

25 BISHTON & GUBERNICK

26
27 By:

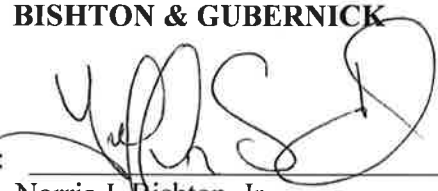
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Norris J. Bishton, Jr.
Jeffrey S. Gubernick
Attorneys for Defendant

Exhibit A

NOTICE OF PAGA RESOLUTION

Gilberto Rosales v. Fox Hills Auto, Inc., et al.
Superior Court of the State of California for the County of Los Angeles
Case No. 20STCV16964

<<Name>>
<<Address>>
<<City>>, <<State>> <<Zip Code>>
XX - XX - _ _ _ _

I. NOTICE OF PAGA SETTLEMENT

The Los Angeles County Superior Court (the “Court”) has approved a settlement in the above-captioned action filed by Gilberto Rosales (“Plaintiff”) on behalf of himself and all other aggrieved employees.

In this lawsuit, Plaintiff is seeking to recover civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other aggrieved employees under the California Private Attorneys General Act (“PAGA”). These civil penalties are based on Plaintiff’s allegations that defendants Fox Hills Auto, Inc. and Fox Hills Auto Inc. dba Airport Marina Ford (“Defendants”) violated California state wage and hour laws governing: meal and rest breaks; unpaid wages, including minimum wages, regular wages, overtime, and double time wages, and all theories for or related to nonpayment of such wages; wage statement violations; and separation pay violations.

The Court has ***not*** made a determination about 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.

Defendants deny Plaintiff’s allegations. Defendants maintain it was in compliance with the California Labor Code at all times. It contends that it followed lawful policies and practices and that Mr. Rosales and the other non-exempt employees at issue in the PAGA Action were paid appropriate meal period and rest break wages, properly paid all appropriate minimum and overtime wages, and provided compliant wage statements. It 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.

You are receiving this Notice because you are in the group of employees referred to as “Aggrieved Employees,” which is defined as: (a) All persons within the State of California who are or were employed by Defendants as hourly, non-exempt employees in the State of California at any time within the period from February 26, 2019 through [Approval Date]. (“Aggrieved Employees”).

II. INDIVIDUAL PAGA PAYMENT

Each individual PAGA payment was calculated on a proportional basis based on the number of pay periods worked by that individual during the period from February 26, 2019 through

[Approval Date] (“PAGA Period”). Your individual PAGA payment has been calculated at \$[AMOUNT PAID TO THIS EMPLOYEE]. Your payment is enclosed with this Notice.

The amount paid to each PAGA Group Member will be allocated as follows: one-hundred percent (100%) will be attributed to penalties and will be reported on an IRS Form 1099. The Parties agree that all Aggrieved Employees who receive payment pursuant to this settlement will be responsible for any and all tax obligations associated with such receipt. **You will be responsible for correctly characterizing this compensation for tax purposes and paying any taxes that may be due on the payment you receive. Neither Counsel for Plaintiff, Counsel for Defendants, nor the Settlement Administrator may legally provide you with advice regarding the tax implications of the receipt of this settlement payment.**

III. RELEASE

The Court has approved the Parties’ Settlement Agreement (“Settlement”). By operation of the Settlement’s terms, Plaintiff, as a representative of the State of California, the PAGA Group, and the State of California will release and forever discharge any and all claims and causes of action, known or unknown, contingent or accrued, against Defendants, Defendants’ parents, subsidiaries, affiliates, their insurers, attorneys, shareholders, executives, managers, and all agents thereof (collectively “Released Parties”), arising out of the facts and claims asserted in the Action for civil penalties under the Private Attorney General Act of 2004 Cal. Lab. Code § 2698 based upon the facts alleged, for violations of the California Labor Code governing: meal and rest breaks; unpaid wages, including minimum wages, regular wages, overtime, and double time wages, and all theories for or related to nonpayment of such wages; wage statement violations; separation pay violations; and any other penalties which could be asserted based on the allegations alleged against Defendants in Plaintiff’s LWDA letter and the Action (the “Released Claims”). As a result of this release, the PAGA Group will be unable to bring a claim under PAGA, or recover civil penalties under any pending PAGA lawsuit, for any of the Released Claims that arose during the PAGA Period.

IV. SETTLEMENT ADMINISTRATOR

**** PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE ****

You may call the Settlement Administrator at [ADMINISTRATOR INFO] with any questions.

Settlement checks will be void 180 days after issuance if not deposited or cashed. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement. If you do not cash or otherwise deposit your check, after 180 days, it will be transmitted to the California State Controller’s Office in the Unclaimed Property Fund in your name.