

Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
Enzo Nabiev (SBN 332118)
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kane.moon@moonyanglaw.com
E-mail: allen.feghali@moonyanglaw.com
E-mail: enzo.nabiev@moonyanglaw.com

Attorney for Plaintiff Audelino Contreras

Michael Miretsky, Esq., State bar No. 180734
Peter J. Horton, Esq., State bar No. 227678
LEIBL, MIRETSKY & MOSELY, LLP
5014 Chesebro Road
Agoura Hills, CA 91310
(818) 380-0123
(818) 380-0124 (Fax)

Attorneys for Defendant F & W Grand Auto Care, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

AUDELINO CONTRERAS, an individual and
on behalf of the State of California and other
aggrieved persons,

Plaintiff,

vs.

F & W GRAND AUTO CARE, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 20STCV05254

[Assigned to Hon. Monica Bachner, Dept. 71]

**SETTLEMENT AGREEMENT AND
RELEASE OF PAGA CLAIMS**

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SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS

Plaintiff Audelino Contreras (“Plaintiff”), individually and in his capacity as a representative of the State of California on behalf of other aggrieved employees, and defendant F & W Grand Auto Care, Inc. (“Defendant”), hereby enter into this Settlement Agreement and Release of Private Attorneys General Act of 2004 Claims (“Settlement”) as follows:

I. DEFINITIONS

As used in this Settlement, the following terms shall have the following meanings:

1. “Action” shall mean the civil action entitled *Contreras v. F & W Grand Auto Care, Inc., et al.*, filed in the Superior Court for the County of Los Angeles on February 10, 2020, designated as Case No. 20STCV05254.
2. “Defendant” shall mean at Defendant F & W Grand Auto Care, Inc.
3. “Defense Counsel” shall mean LEIBL, MIRETSKY & MOSELY, LLP.
4. “Effective Date” refers to the date upon which both of the following have occurred:
 - (i) approval of the Settlement is granted by the Superior Court of California for the County of Sacramento, or other court assuming jurisdiction of this matter, and (ii) the Court’s Judgment approving the Settlement becomes Final. If there is an appeal of the Court’s Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme Court shall be the date the Settlement is Final. If there is an intervenor, but no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment shall be the date the Settlement is Final. If there is no intervenor in the action, the date the Court enters an order approving this Settlement shall be the date the Settlement is Final.
5. “LWDA” refers to the California Labor & Workforce Development Agency.
6. “PAGA” refers to the Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq.*
7. “PAGA Period” shall mean February 10, 2019, through January 12, 2021 .
8. “PAGA Settlement Members” shall mean all persons employed by Defendant as a non-exempt employee in California at any time during the PAGA Period. For purposes of this Settlement only, and not otherwise as an admission of any misconduct or wrongdoing by Defendant, Defendant and

1 Plaintiff stipulates that all PAGA Settlement Members are aggrieved employees pursuant to PAGA.

2 9. "PAGA Fund" shall mean the Total Settlement Payment, less Plaintiff's Counsel
3 Payment and the Settlement Administration Costs.

4 10. "Plaintiff" refers to Audelino Contreras individually and in his capacity as representatives
5 of the State of California on behalf of other aggrieved employees.

6 11. "Plaintiff's Counsel" refers to Moon & Yang, APC.

7 12. "Parties" collectively refers to Plaintiff and Defendant.

8 13. "Released Claims" shall mean any and all claims, whether known or unknown, to recover
9 civil penalties pursuant to PAGA for any alleged violations by Defendant of California Labor Code §§
10 201-203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, any category of
11 violations identified in Labor Code § 2699.5, and the related applicable IWC Wage Order provision for
12 the PAGA Period.

13 14. "Released Parties" shall mean defendant F & W Grand Auto Care, Inc., and all of its
14 subsidiary companies, affiliates, holding companies, successors, partners, shareholders, insurers, legal
15 representatives, assigns, employees, officers, directors, attorneys, and agents.

16 15. "Settlement Administrator" refers to a qualified, third-party settlement administrator
17 agreed to by the Parties to administer the terms of the Settlement. The Parties agree to utilize Phoenix
18 Settlement Administrators, Inc. to administer the Settlement, at an estimated cost of \$7,500.00.

19 **II. RECITALS**

20 16. On February 7, 2020, Plaintiff sent a letter to the LWDA on behalf of himself, in
21 compliance with California Labor Code section 2699.3. More than 65 days passed after the letter was
22 sent to the LWDA, and the LWDA has not indicated that it intends to investigate the alleged violations
23 referenced in the letter.

24 17. Counsel for all Parties have thoroughly investigated the facts relating to the claims
25 alleged in the operative complaint and have made a thorough study of the legal principles applicable to
26 the claims asserted against Defendant. Based on their investigation and evaluation of this case,
27 Plaintiff's Counsel has concluded that the settlement is fair, reasonable, and adequate in light of all
28 known facts and circumstances, including the defenses asserted by Defendant, potential adverse findings

1 regarding liability, and numerous potential appellate issues.

2 18. Defendant denies, and continues to deny, each and every claim and contention alleged in
3 the Action, and has always maintained that it never engaged in any unlawful acts regarding any of the
4 matters alleged in the Action.

5 **NOW, THEREFORE**, in consideration of the mutual covenants, promises, and conditions set
6 forth, the Parties agree as follows:

7 **III. NON-ADMISSION OF LIABILITY**

8 19. Based on the factual and legal issues involved, the expense and time necessary to
9 prosecute the Action through trial, the risks, uncertainty and costs of further prosecution, the difficulty of
10 proof necessary to establish a class for purposes of liability, and the relative benefits to the PAGA
11 Settlement Members of an expeditious resolution to the Action, the Parties have concluded that the terms
12 set forth in this Settlement are fair, reasonable, adequate and in the best interests of the PAGA Settlement
13 Members.

14 20. By entering into this Settlement, Defendant denies any liability for any of the claims in
15 the Action, as well as any other potential or unknown claims based on wage and hour violations under
16 state or federal law. Neither this Settlement, nor any document referred to or contemplated herein, nor
17 any action taken to carry out this Settlement, is, may be construed as, or may be used as, an admission,
18 concession, or indication by or against Defendant of any unlawful conduct, fault, wrongdoing or liability
19 whatsoever. Defendant specifically denies that it has engaged in any unlawful or wrongful conduct
20 against Plaintiff or the PAGA Settlement Members.

21 **IV. TERMS OF THE PAGA SETTLEMENT**

22 **A. The Total Settlement Payment**

23 21. Defendant shall pay a settlement payment in a total amount not to exceed \$75,000.00 (the
24 "Total Settlement Payment"). The Total Settlement Payment shall include settlement administrative fees
25 and costs and the PAGA Fund. Defendant represents that there are approximately 1,600 pay periods and
26 64 PAGA Settlement Members. In the event that actual number of pay periods or PAGA Settlement
27 Members exceeds these estimates by 10% an escalation clause will be automatically triggered.
28 Specifically, if the number aggrieved employees is 71 or more, or the number of workweeks is 1,760 or

more, the settlement amount shall be increased by the percentage that that actual number of aggrieved employees or pay periods exceed the original estimates.

B. Plaintiff's Counsel Payment of Attorneys' Fees and Costs

22. Plaintiff's Counsel will apply to the Court for an award of attorneys' fees not to exceed one-third (1/3) of the Total Settlement Payment, and Plaintiff's Counsel will also seek reimbursement of reasonable litigation costs (attorneys' fees and reasonable litigation costs are referred to as "Plaintiff's Counsel Payment"). Attorneys' fees shall not exceed one-third (1/3) of the Total Settlement Payment, and costs are estimated not to exceed \$15,000.

23. Defendant will not oppose or object to Plaintiff's Counsels' application for attorneys' fees, not to exceed one-third (1/3) of the Total Settlement Payment plus all documented and reasonable litigation costs and expenses.

24. In the event that the Court does not approve an award of attorneys' fees equal to the requested amount, or the Court alters the payment methodology described herein, Plaintiff's Counsel agrees not to seek additional review of the Court's decision regarding attorneys' fees, and this Settlement will be enforceable.

25. Plaintiff's Counsel Payment shall be paid from the Total Settlement Payment. Any reductions by the Court of Plaintiff's Counsel's request for attorneys' fees or costs shall revert to the PAGA Fund.

C. Settlement Administration Fees and Costs

26. Settlement administration shall be done by a qualified, third-party settlement administrator agreed to by the Parties and approved by the Court ("Settlement Administrator"). The Parties agree that the Settlement Administrative Costs shall be paid from the Total Settlement Payment. This includes all fees and costs for postage, envelopes, and computer searches to locate addresses; and expenses of the Settlement Administrator to implement and complete the settlement process according to the terms of this Settlement, to calculate payments to individual PAGA Settlement Members, any cost associated with the escheatment process for any uncashed or undeliverable settlement checks, to prepare any necessary tax documents for PAGA Settlement Members, and any other related fees and costs (the "Settlement Administrative Costs").

27. The settlement administration fees and costs shall be paid from the Total Settlement Payment. Any reductions by the Court or any unused amount shall revert to the PAGA Fund.

D. PAGA Fund

28. After deducting the Plaintiff's Counsel Payment and Settlement Administration Costs, the remainder of the Total Settlement Payment shall be allocated toward payment to the Labor & Workforce Development Agency and PAGA Settlement Members (the "PAGA Fund").

29. Seventy-five percent (75%) of the PAGA Fund will be sent to the LWDA and twenty-five percent (25%) of the PAGA Fund will be allocated among the PAGA Settlement Members, based on his or her proportionate share of the weeks worked during the PAGA Period.

V. COMPUTATION AND DISTRIBUTION OF TOTAL SETTLEMENT FUND

A. Deposit of Total Settlement Payment

30. The Settlement Administrator shall establish a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement. The Settlement Administrator shall furnish the Qualified Settlement Fund with its own Employer ID Number and calculate all settlement checks and withholdings required under law based on information that will be confidentially furnished by Defendant. There are no payroll deductions to be calculated under this Settlement, since no part of the Settlement will be classified as wages.

31. Defendant shall deposit the Total Settlement Payment with the Settlement Administrator the later of fourteen (14) days following the Effective Date or April 12, 2021.

B. Formula for Calculating Share of PAGA Fund

32. The portion of the PAGA Fund that is paid to each PAGA Settlement Member shall be determined based on the following formula:

- (a) The payment to PAGA Settlement Members will be based on the number of weeks worked by each PAGA Settlement Member during the PAGA Period. Partial weeks will be counted as full work weeks.
- (b) The amount to be paid per week worked by a PAGA Settlement Member will be calculated by dividing the value of the portion of the PAGA Fund that will be paid to PAGA Settlement Members by the total number of weeks worked by all

PAGA Settlement Members during the PAGA Period.

- (c) Defendant's records shall be determinative for purposes of calculating the number of weeks worked and any payments to PAGA Settlement Members.

C. Distribution of PAGA Fund

33. Defendant shall provide the Settlement Administrator with a list of the names and addresses of the PAGA Settlement Members, to be furnished within five (5) days after the Court issues an Order approving the Settlement. The contact information is being provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of contact information of the PAGA Settlement Members. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Settlement.

34. Within seven (7) days after the Total Settlement Payment is fully funded, the Settlement Administrator shall pay to the LWDA an amount equivalent to seventy-five percent (75%) of the PAGA Fund, or as otherwise directed by the Court.

35. Within seven (7) days after the Total Settlement Payment is fully funded, the Settlement Administrator shall distribute to PAGA Settlement Members their individual portion of the PAGA Fund (the "Individual Payment"), or as otherwise directed by the Court.

36. Within seven (7) days after the Total Settlement Payment is fully funded, the Settlement Administrator shall distribute to the Plaintiff's Counsel their court-approved Plaintiff's Counsel Payment and approved litigation costs.

37. The Settlement Administrator will send the Individual Payment to the PAGA Settlement Members by postmarked First Class U.S. Mail.

38. To provide the best notice and delivery of Individual Payments practicable, any Individual Payment returned to the Settlement Administrator as non-delivered shall be sent by postmarked First Class U.S. Mail to the forwarding address affixed thereto, if any. If no forwarding address is provided for an Individual Payment that is returned as non-deliverable, the Settlement Administrator shall use the best available technology accessible (e.g. skip tracing, address verification, etc.) to the Settlement Administrator or other mutually agreeable method to locate PAGA Settlement Members and

will then mail the Individual Payment to the address identified by the best available technology accessible to the Settlement Administrator or other mutually agreeable method. If no current address is located, the Individual Payment for that individual will be deemed undeliverable. If any PAGA Settlement Members cannot be located within two attempts at mailings by the Settlement Administrator, the Individual Payment for that individual will be deemed undeliverable.

39. The Settlement Administrator shall maintain a list of the postmark date for the original mailing of the Individual Payment to the PAGA Settlement Members, the postmark date of any subsequent mailing to any PAGA Settlement Members, and a list of PAGA Settlement Members who did not receive the Individual Payment due to the inability to locate a valid address using the procedures described herein or who otherwise could not be located within two attempts at mailing.

40. All settlement checks will remain valid and negotiable for 180 days from the date of their mailing by the Settlement Administrator. After 180 days from the date of their mailing by the Settlement Administrator, any uncashed checks will be void and escheat to the California State Controller's Office in the name of the Class Member who did not cash his or her check.

41. No later than January 31 of the year following payment of their individual portion of the PAGA Fund, the Settlement Administrator will prepare and issue IRS Form 1099 to PAGA Settlement Members who received a payment.

D. Settlement Administration Payment

42. Within seven (7) days after Total Settlement Payment is fully funded, the Settlement Administrator shall deduct an amount equivalent to the Settlement Administrative Costs.

VI. CLAIMS RELEASED BY PAGA SETTLEMENT MEMBERS

A. Claims Released by the LWDA and All PAGA Settlement Members

43. Upon the date of entry of an order by the Court in this Action approving this Settlement, the LWDA and PAGA Settlement Members, including Plaintiff, fully release and forever discharge the Released Parties from any and all Released Claims. As a result of this release, the PAGA Settlement Members will be unable to bring a claim under, or recover in any other claim brought under, the California Private Attorneys General Act, California Labor Code § 2698 *et seq.*, for any violations of the Released Claims that took place during the PAGA Period.

1 **B. Tax Treatment and Tax Indemnification**

2 44. PAGA Settlement Members will assume any tax obligations or consequences which may
3 arise from this Settlement. PAGA Settlement Members release any and all claims that they have or may
4 have against Defendant for any claims, demands, deficiencies, levies, assessments, executions,
5 judgments, penalties, taxes, indemnification, and any other recoveries related to any payments made
6 under this Settlement or any compensation provided at any time by Defendant or any of the Released
7 Parties. If any state or federal taxing authority contacts, investigates, or pursues any action against any
8 PAGA Settlement Members for their individual share of taxes related to any payments made under this
9 Settlement or any compensation provided at any time by Defendant or any of the Released Parties, each
10 PAGA Settlement Member shall be responsible for their own defense of and payment for any claim of
11 unpaid taxes, interest, or penalties brought by any state or federal taxing authority for the PAGA
12 Settlement Member's share of any state or federal tax obligation. If a PAGA Settlement Member has
13 questions about any liability to any state or federal taxing authority, they shall contact the Settlement
14 Administrator. The PAGA Settlement Members shall not contact Defendant, any of the Released
15 Parties, or Defense Counsel.

16 **VII. MISCELLANEOUS PROVISIONS**

17 **A. Mutual Full Cooperation**

18 45. Plaintiff and Defendant, Plaintiff's Counsel, and Defense Counsel agree to fully
19 cooperate with each other to accomplish the terms of this Settlement, including, but not limited to,
20 execution of such documents and to take such other action as may reasonably be necessary to implement
21 the terms herein. The Parties agree to use their best efforts and any other efforts that may become
22 necessary by Order of the Court, or otherwise, to effectuate this Settlement.

23 **B. Parties' Authority**

24 46. The signatories hereto represent that they are fully authorized to enter into this
25 Settlement.

26 **C. Binding Nature of the Settlement**

27 47. This Settlement shall be binding upon, and inure to the benefit of, the successors or
28 assigns of the Released Parties. Plaintiff represents, covenants, and warrants that he has not directly or

indirectly, assigned, transferred, encumbered, any claim, demand, action, cause of action or rights released in the Released Claims in this Settlement. This Settlement also shall be binding upon Plaintiff and the PAGA Settlement Members.

48. This Settlement may be amended or modified only by a written instrument. No rights under this Settlement may be waived except in writing.

49. This Settlement constitutes the entire agreement between Plaintiff and Defendant relating to the settlement of the PAGA cause of action alleged in this action. All prior or contemporaneous agreements, understandings and statements, whether oral or written, whether express or implied, and whether by a party or its counsel, concerning this Settlement are merged herein. No oral or written representations, warranties or inducements have been made to any party concerning this Settlement other than the representations, warranties and covenants contained and memorialized in such documents.

50. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any of its provisions. Each term of this Settlement is intended to be contractual and not merely a recital.

D. Joint Drafting of Settlement Documents

51. Plaintiff's Counsel and Defense Counsel have arrived at this Settlement as a result of a series of arm's-length negotiations, taking into account all relevant factors, present and potential.

52. This Settlement has been drafted jointly by Plaintiff's Counsel and Defense Counsel and, therefore, in any construction or interpretation of this Settlement, the same shall not be construed against any of the Parties.

E. Execution of the Settlement

53. This Settlement may be executed in one or more counterparts and by facsimile. All executed copies of this Settlement and photocopies thereof shall have the same force and effect and shall be as legally binding and enforceable as the original.

F. Continuing Jurisdiction of the Court

54. Pursuant to California Code of Civil Procedure section 664.6, the Parties agree that the Court shall retain jurisdiction over the Parties, and over this Settlement, in order to: (i) monitor and enforce compliance of Settlement, and/or (ii) resolve any disputes over this Settlement or the

administration of the benefits of this Settlement.

G. Representations by Plaintiff

55. Plaintiff acknowledges the following:

- (a) Plaintiff has carefully read and fully understand all of the provisions of this Settlement;
- (b) Plaintiff knowingly and voluntarily agrees to all of the terms set forth in this Settlement and have not been coerced, threatened, or intimidated into executing this Settlement;
- (c) Plaintiff was advised, and hereby is advised in writing, to consider the terms of this Settlement and consult with his attorneys before signing this Settlement.
- (d) Other than the fees and costs awarded pursuant to the terms of this Settlement, Plaintiff acknowledges that all parties shall bear their own fees and costs through the conclusion of this action.

H. Representations by Defendant

56. Defendant acknowledge the following:

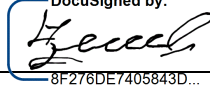
- (a) Released Parties have carefully read and fully understand all of the provisions of this Settlement;
- (b) Released Parties knowingly and voluntarily agree to all of the terms set forth in this Settlement and have not been coerced, threatened, or intimidated into executing this Settlement;
- (c) Released Parties were advised, and hereby are advised in writing, to consider the terms of this Settlement and consult with their attorney before signing this Settlement.
- (d) Other than the fees and costs awarded pursuant to the terms of this Settlement, Released Parties acknowledge that all parties shall bear their own fees and costs through the conclusion of this action.

AGREED TO BY PLAINTIFF:

1 DATED: 1/29/2021

AUDELINO CONTRERAS, individually and on
behalf of other aggrieved employees

DocuSigned by:


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4 AGREED TO BY DEFENDANT:

5 DATED:

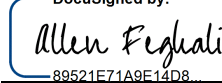
F & W GRAND AUTO CARE, INC.

6
7
8
9 Title

10 AGREED TO BY PLAINTIFF'S COUNSEL:

11
12 **MOON & YANG, APC**

DocuSigned by:


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13 DATED: 1/29/2021

14 Kane Moon
Allen Feghali
Enzo Nabiev

15
16 AGREED TO BY DEFENDANT'S COUNSEL:

17
18 **LEIBL, MIRETSKY & MOSELY, LLP**

19 DATED:

20 Peter J. Horton
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