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8 Attorneys for Plaintiff Carlos Carrillo, on behalf of himself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF VENTURA**

12 CARLOS CARRILLO, on behalf of
13 himself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*,

14 Plaintiffs,

15 v.

16 KIRBY OLDSMOBILE, a California
17 corporation, and DOES 1 through 10,
inclusive,

18 Defendants.
19

CASE NO: 56-2020-00542491-CU-OE-VTA

*Assigned for all purposes to the Hon. Kevin
DeNoce, Dept. 43*

**DECLARATION OF DANIEL GAINES IN
SUPPORT OF STIPULATION AND
[PROPOSED] ORDER APPROVING
SETTLEMENT OF PRIVATE ATTORNEYS
GENERAL ACT CLAIMS AND DISMISSING
ACTION WITH PREJUDICE**

Complaint Filed: June 11, 2020

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Carlos Carrillo ("Plaintiff") in this
4 action. I have personal knowledge of the facts set forth herein and if called as a witness to testify
5 to them, I could and would do so competently.

6 2. I obtained my BS degree from the University California at Berkeley in 2003. I
7 majored in Business Administration at the Haas School of Business.

8 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
9 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
10 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my studies
11 on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

12 4. Since becoming a member of the Bar, I have practiced law with my father, Kenneth,
13 at Gaines & Gaines, APLC. Our practice specializes in litigation, with an emphasis in business,
14 real estate, and employment disputes like this one. Over 75% of my practice is devoted to complex
15 employment litigation similar to the instant action.

16 5. My firm has represented employees in employment matters such as this one, with
17 an emphasis in wage and hour issues. I have participated in and have been certified as Court-
18 approved class counsel in dozens of class and representative action matters since my admission to
19 the Bar. A true and correct list of the cases in which I have been appointed as class counsel is
20 attached hereto as Exhibit "B".

21 6. On February 5, 2020, Plaintiff complied with the requirements set forth in Labor
22 Code § 2698 *et seq.*, the Labor Code Private Attorneys General Act (hereinafter, "PAGA") by
23 sending a letter, by online submission to the Labor and Workforce Development Agency
24 ("LWDA") and by certified mail to Defendant Kirby Oldsmobile ("Defendant") (hereinafter
25 Plaintiff and Defendant are collectively referred to as the "Parties"), setting forth the facts and
26 theories of the violations alleged against Defendant. A true and correct copy of the letters submitted
27 to the LWDA is attached hereto as Exhibit "A".

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7. Plaintiff filed his Representative Action Complaint on June 11, 2020 seeking penalties pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, 1174, 1194 and 1198 and penalties pursuant to Labor Code § 2699(a) for violations of Labor Code § 226.3 (“the Action”).

8. The Parties engaged in informal discovery, which provided my office with sufficient information to ascertain the size of the aggrieved employee group, the number of affected pay periods at issue among them, and the strength of Plaintiff's claims.

9. Being fully apprised of the value and strength of Plaintiff's claims, the Parties participated in a mediation with the Steve Pearl, Esq. on September 7, 2021 in an attempt to resolve the claims asserted in the Action.

10. The Parties engaged in arm's-length negotiations and reached a resolution of the PAGA claims asserted in the Action at the mediation. Based on the information and documents obtained through informal discovery and during mediation, Plaintiff assessed the maximum value of the PAGA claims (without stacking) to be approximately \$333,400 (at the rate of a \$100 penalty for approximately 3,334 pay periods at issue for 130 aggrieved employees during the applicable time frame).

11. The amount of the settlement is \$250,000 and includes an apportionment of attorneys' fees and costs and a general release payment to Plaintiff.

12. Based on my extensive experience litigating representative employment actions, I believe that the settlement amount represents a fair compromise of the claims.

13. Attached hereto as Exhibit "C" is a true and correct copy of the parties' Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 20th day of October, 2021 at Calabasas, California.

Daniel F. Gaines
DANIEL F. GAINES

EXHIBIT A

GAINES & GAINES

A PROFESSIONAL LAW CORPORATION

WWW.GAINESLAWFIRM.COM

27200 AGOURA ROAD, SUITE 101

CALABASAS, CALIFORNIA 91301

PHONE (818) 703-8985

FAX (818) 703-8984

February 5, 2020

Via Certified Mail

Labor & Workforce Development Agency
By online submission

Kirby Oldsmobile
6424 Leland St
Ventura, CA 93003

Defendant mailed certified # 70190700000201195482

Agent for Service of Process for Kirby Oldsmobile
Jeff Sukav

6424 Leland St
Ventura, CA 93003

Agent mailed certified # 70190700000201195499

Re: ***Labor Code Violations of Kirby Oldsmobile – Compliance Letter of California Labor Code § 2698 - Private Attorneys General Act***

Dear LWDA:

This office represents Carlos Carrillo, a former non-exempt California employee of Kirby Oldsmobile (“Defendant”). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client was employed by Defendant in Southern California as a non-exempt employee. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its non-exempt California employees (“Aggrieved Employees”).

Our client alleges that Defendant failed to properly compute bonuses and other non-base hourly wages earned by our client and other Aggrieved Employees into their regular rate of pay for purposes of paying them overtime at the correct rates, in violation of Labor Code §§ 510 and 1194. Defendant failed to properly blend these non-base wages and instead paid our client and other non-exempt Aggrieved Employees overtime based *only* on the base hourly rate of pay, thus depriving our client and other non-exempt Aggrieved Employees of all overtime wages earned.

Defendant failed to pay premium wages to our client and Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 7-2001. Our client and Aggrieved Employees were routinely unable to take an off-duty 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour’s pay for each missed rest period. This violates Labor Code § 226.7 and IWC Wage Order No. 7-2001.

Labor & Workforce Development Agency
Kirby Oldsmobile
Jeff Sukav
February 5, 2020
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Defendant failed to pay premium wages to our client and Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 7-2001. Our client and Aggrieved Employees were routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours in duration, but were not paid premium wages of one hour's pay for each missed first or second meal period. Defendant also fails to maintain meal period records. This violates Labor Code §§ 226.7, 512, 1174, and 1198 and IWC Wage Order 7-2001.

Our client further alleges that Defendant failed to provide him and all other Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Our client and other Aggrieved Employees were not paid all wages due, as stated above. As such, the wage statements provided by Defendant failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9). Independent of the above allegations, the wage statements issued to our client and all other Aggrieved Employees also fail to set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

Our client further alleges that Defendant failed to pay him all wages due at the separation of his employment based on the time frames required by Labor Code §§ 201 and 202. As stated above, our client and other Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of our client and certain Aggrieved Employees.

The \$75 PAGA filing fee has been mailed to the LWDA concurrently with the transmission of this letter.

We invite Defendant or its attorney to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.

Very truly yours,

GAINES & GAINES
A Professional Law Corporation

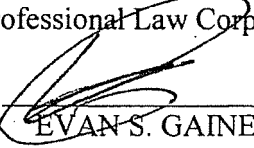
By: 
EVAN S. GAINES

EXHIBIT B

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender 's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaience OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. CIVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT C

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

Carlos Carrillo v. Kirby Oldsmobile
Ventura County Superior Court
Case Number 56-2020-00542491-CU-OE-VTA

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of this action with respect to all claims brought in a representative capacity pursuant to the Private Attorneys General Act ("PAGA") (Labor Code § 2698 *et seq.*) shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this PAGA Settlement Agreement ("Agreement").

This Agreement is made by and between Defendant Kirby Oldsmobile ("Defendant"), Plaintiff Carlos Carrillo ("Plaintiff"), on behalf of himself, Aggrieved Employees (defined below), and the State of California. (Defendant, Plaintiff and Aggrieved Employees, as defined herein, are sometimes collectively referred to as the "Parties.") This Agreement shall be effective upon the last date upon which it is signed by the Parties.

The Parties agree that all representative claims brought pursuant to PAGA in Ventura County Superior Court case number 56-2020-00542491-CU-OE-VTA (the "Litigation" or "Action") shall be, and hereby are, ended, settled, resolved, and concluded by agreement of Defendant to pay the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) (hereinafter referred to as the "Gross Settlement Amount") for settlement of the PAGA claims and penalties sought in the Litigation, which shall be inclusive of Plaintiff's Counsel attorneys' fees and costs in connection with this Agreement and a general release payment to Plaintiff Carrillo. The Parties further agree that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability.

Article I. Definitions.

Section I.01 Definitions. Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) "Aggrieved Employees" means all current and former non-exempt employees employed by Kirby Oldsmobile in California at any time during the Settlement Period (February 5, 2019 through September 7, 2021). Defendant represents that the total number of Aggrieved Employees is no more than 130 individuals.
- (b) "Complaint" means the Complaint filed by Plaintiff on or about June 11, 2021 which asserts claims under PAGA predicated on underlying violations of Labor Code §§ 201, 202, 226(a), 226.3, 226(a), 226.7, 510, 512, 1174, 1194 and 1198.
- (c) "Court" means the Superior Court for the State of California, County of Ventura.
- (d) "Defense Counsel" or "Counsel for Defendant" is:

Michael A. Velthoen, Esq.
FERGUSON CASE ORR PATERSON LLP
1050 South Kimball Road
Ventura, California 93004

- (e) "Effective Date" means the date the Court approves the settlement of the PAGA penalties as described in this Agreement and enters judgment consistent with this Agreement.
- (f) "Plaintiff's Counsel" is:

Alex P. Katofsky, Esq.
Daniel F. Gaines, Esq.
GAINES & GAINES, APLC
27200 Agoura Road, Suite 101
Calabasas, California 91301
- (g) "Settlement Period" means the time period starting February 5, 2019 and ending September 7, 2021.
- (h) "Settlement Administrator" shall refer to ILYM Group, Inc.

Article II. Background.

Section 2.01 Background.

- (a) On June 11, 2021, Plaintiff Carrillo filed a complaint in the Superior Court of the State of California for the County of Ventura styled, *Carlos Carrillo v. Kirby Oldsmobile*, Case No. 56-2020-00542491-CU-OE-VTA. The Complaint alleges as a single representative cause of action on behalf of Plaintiff, the State of California and other Aggrieved Employees pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) based on alleged violations of Labor Code §§ 201, 202, 226(a), 226.3, 226(a), 226.7, 510, 512, 1174, 1194 and 1198 premised on Defendant's alleged failure to pay all overtime wages, provide all meal and rest periods, or premium compensation in lieu thereof, timely pay wages due at separation of employment, and issue complete and accurate wage statements.
- (b) The Parties have exchanged significant informal discovery. The Parties thereafter reached this Agreement following a mediation with Steve Pearl, Esq. on September 7, 2021.
- (c) This Agreement contemplates the entry of an order by the Court approving the payments allocated for settlement of the PAGA claims and entering judgment consistent with this Agreement.

Article III. Settlement Payments

Section 3.01 Gross Settlement Amount.

- (a) Defendant will pay a total amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) to settle this matter. This amount ("the Gross Settlement Amount") shall cover, resolve, and fully satisfy any and all amounts owed to Plaintiff, the Aggrieved Employees, the State of California, and Plaintiff's Counsel, including all amounts allocated to attorneys' fees and costs, in settlement of all claims asserted in the Complaint by Plaintiff, on behalf of himself and the Aggrieved Employees. The Parties agree that there are no circumstances that would require Defendant to pay any amount greater than the Gross Settlement Amount in connection with this Agreement.
- (b) Defendant shall pay the Gross Settlement Amount via wire, bank transfer or certified funds to the Settlement Administrator no more than ten (10) calendar days after receiving written notice that the Court has approved the Agreement. The Settlement Administrator will provide to Defendant's attorney a W-9 form for the Qualified Settlement Fund prior to its funding of the Gross Settlement Amount.
- (c) In the event that this Agreement is canceled, rescinded, terminated, voided or nullified, however that may occur as permitted herein, or the settlement is barred by operation of law, invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant shall have no obligation to pay any of the Gross Settlement Amount and the Parties' respective positions shall be restored to positions prior to mediation.

Section 3.02 Payments From Gross Settlement Amount.

- (a) Plaintiff's Counsel will request from the Court, and Defendant will not oppose, (1) attorneys' fees in an amount not exceed forty percent (40%) of the Gross Settlement Amount (\$100,000.00) and (2) costs in an amount not to exceed twelve thousand dollars (\$12,000.00). Such fees and costs will be paid to Plaintiff's Counsel from the Gross Settlement Amount. Failure of the Court to approve all of the requested amount of attorneys' fees and costs shall not provide any grounds for rescission or nullification of this Agreement.
- (b) Plaintiff will be paid the sum of ten thousand dollars (\$10,000.00) from the Gross Settlement Amount in exchange for the release of claims set forth in Section 6.02.
- (c) The Settlement Administrator will pay to itself out of the Gross Settlement Amount its reasonable fees and expenses in amount not to exceed five thousand dollars (\$5,000.00).

Section 3.03 Net Settlement Amount.

- (a) The "Net Settlement Amount" shall be calculated by deducting from the Gross Settlement Amount the fees and costs awarded by the Court (as set forth in Section 3.02(a)), the individual payment to Plaintiff (as set forth in Section 3.02(b)), and the Settlement Administrator's fees and expenses (as set forth in Section 3.02(c)). Assuming the Court

approves the requested amounts set forth in Section 3.02, the Net Settlement Amount shall be one hundred twenty-three thousand dollars (\$123,000.00.)

- (b) Seventy-five percent (75%) of the Net Settlement Amount (approximately ninety-two thousand, two hundred fifty dollars (\$92,250.00)) shall be distributed to the State of California Labor and Workforce Development Agency ("LWDA").
- (c) The remaining twenty-five percent (25%) of the Net Settlement Amount (approximately thirty thousand, seven hundred fifty dollars (\$30,750.00) dollars) shall be distributed to the Aggrieved Employees.

Section 3.04 Payments to Aggrieved Employees.

- (1) The twenty-five percent (25%) of the Net Settlement Amount to be distributed to the Aggrieved Employees will be divided by the total number of pay periods worked by all of Aggrieved Employees in California during the Settlement Period to yield the Pay Period Value.
- (2) At the time Defendant deposits the Gross Settlement Amount with the Settlement Administrator, Defendant shall also provide the Settlement Administrator the names, social security numbers, and last known addresses of each Aggrieved Employee, along with the number of pay periods each of them worked for Defendant in California during the Settlement Period.
- (3) No later than twenty (20) calendar days after the Gross Settlement Amount has been paid, the Settlement Administrator shall transmit the Notice of PAGA Settlement (attached hereto as Exhibit "A"), together with settlement checks containing their individual payments, with no claims process required, to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each recipient with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices.
- (4) For each settlement check and Notice of PAGA Settlement that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. The value of checks uncashed more than 180 days after issuance shall be paid to the Office of the California State Controller – Unclaimed Property Fund, to be held in the name of the respective Aggrieved Employees.
- (5) Payments to the Aggrieved Employees shall be considered penalties and will not be subject to local, state or federal tax withholdings. The Settlement Administrator shall issue IRS Form 1099s (if required) to the Aggrieved Employees. All other recipients of payments under this Agreement shall have their payments reported on an IRS Form 1099.

Article IV. Approval Process.

Section 4.01 Approval.

- (1) The Parties will cooperate in obtaining approval of the Settlement Agreement from the Court by filing a stipulation and proposed judgment ("the Proposed Judgment") in the form evidenced as Exhibit "B" to this Agreement. The Parties will file the Proposed Judgment no later than seven (7) days after full execution of this Agreement.
- (2) If necessary, Plaintiff's counsel will file a noticed motion to approve the Settlement Agreement, which motion Defendant shall not oppose.
- (3) The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents.
- (4) The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to, the approval and implementation of the Settlement as described in this Agreement.
- (5) Concurrently with the submission of the Proposed Judgment to the Court, Plaintiff shall submit the stipulation and Proposed Judgment and this Settlement Agreement to the LWDA, as required by PAGA.
- (6) Plaintiff shall submit a copy of the Superior Court's judgment or order that either provides for or denies an award of civil penalties to the LWDA within 10 days after entry of the judgment or order.
- (7) Should the Court not approve the Settlement, this Agreement shall be null and void and have no further effect, and all sums paid by Defendant, if any, shall be promptly returned to it.

Article V. Limitations On Use Of This Settlement.

Section 5.01 No Admission.

This Agreement and compliance with this Agreement shall not be construed as an admission by Defendant of any liability whatsoever, or as an admission by Defendant of any violations of Plaintiff's or Aggrieved Employees' rights, violation of any order, law, statute, duty or contract whatsoever. Defendant specifically disclaims any liability to Plaintiff or any other allegedly aggrieved employee for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract. Defendant further denies that, for any purpose other than settling these matters, that this action is appropriate for representative treatment.

Section 5.02 Non-Evidentiary Use.

This Agreement is admissible for purposes of obtaining court approval of the settlement and is intended to be binding on the parties. It is also admissible in the event that either Party is required to file a motion to enforce any of the terms of the Agreement. Neither this Agreement, nor any of its terms, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or anything else associated with it, shall be offered or used as evidence by any of the Parties, or their respective counsel in the Litigation or in any other action or proceeding, including to establish any liability or admission on the part of Defendant or any Released Parties or to establish the existence of any condition constituting a violation of, or noncompliance with, federal, state, local or other applicable law; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or other events associated with it, shall be construed as an admission or concession by Defendant or any Released Parties or establishment of any such violation(s) or failure(s) to comply with any applicable law. Defendant specifically retains the right to defend, on the merits, against any non-settled claims brought by any Aggrieved Employees.

Section 5.03 Nullification.

Invalidation of any material provision of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

Article VI. Release and Waiver of Claims.

Section 6.01 Limited Release By Aggrieved Employees.

Upon the Effective Date and subject to Defendant's full payment of the Gross Settlement Amount, Plaintiff, on behalf of himself, his heirs, executors, and assigns, the Aggrieved Employees, the LWDA, and the State of California, fully releases and discharges Defendant, and each of its present and former affiliates, parent companies, subsidiaries, divisions, successors, predecessors, and assigns, and each of its respective past and present shareholders, officers, partners, directors, current and former employees, agents, attorneys, insurers, successors, assigns, representatives, accountants, and all persons acting under, by, through, or in concert with any of them (collectively, "Released Parties") from any and all claims, rights, demands, liabilities, and causes of action of every nature and description, under PAGA, which were asserted in the Complaint or which could have been asserted in the Complaint based on the facts pled therein ("Released Claims"), including, but not limited to, claims for violation of violations of Labor Code §§ 201, 202, 226(a), 226.3, 226(a), 226.7, 510, 512, 1174, 1194 and 1198 that accrued during the Settlement Period.

Section 6.02 General Release By Plaintiff Carrillo.

Upon the Effective Date and subject to Defendant's full payment of the Gross Settlement Amount, Plaintiff shall be deemed to have fully, finally, and forever released the Released Parties from any and all claims, demands, obligations, actions, causes of action liabilities, and/or losses of every kind and nature whatsoever that Plaintiff may have against the Released Parties arising directly or indirectly out of any acts, conduct, omissions, agreements, or occurrences taking place prior to September 7, 2021. This release includes, without limiting the generality of the foregoing: any and all claims, demands, causes of action, obligations, charges, damages, liabilities, attorneys' fees and costs relating to, arising out of, or based upon claims of harassment, discrimination, and/or retaliation in violation of local, State or Federal law; any claims arising under the Americans With Disabilities Act or other claims related to allegations of disability discrimination or failure to accommodate a disability; all claims under California Fair Employment and Housing Act or Title VII of the Civil Rights Act of 1964; the Equal Pay Act of 1963; all claims under the California Family Rights Act or the federal Family Medical Leave Act; all claims of violation of public policy, including a claim for wrongful and/or constructive termination of employment; all claims based on tort, including claims for assault, battery, and sexual battery, and/or breach of contract, whether written or oral, express or implied, and any covenant of good faith and fair dealing; any claim for unlawful or unfair business practices; all claims for emotional distress; any and all claims which could have been asserted by Plaintiff against Defendant or the Released Parties; any claims generally relating to Plaintiff's employment with Defendant and/or the cessation thereof. This release in all respects has been voluntarily and knowingly executed with the express intention of effecting the legal consequences provided in California Civil Code § 1542, that is, the extinguishment of obligations herein designated.

With respect to these Released Claims as described in this Section, Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits she may otherwise have had pursuant to Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Notwithstanding the foregoing, the release is not intended to bar any claims that, by law, may not be waived, such as claims for workers' compensation benefits, unemployment insurance benefits, or statutory indemnity. This release does not prevent Plaintiff from contacting, providing information to, or filing a charge with any federal, state or local government agency or commission, including but not limited to the Equal Employment Opportunity Commission ("EEOC"), the Securities and Exchange Commission ("SEC"), or the National Labor Relations Board ("NLRB"). Plaintiff is prevented, however, to the maximum extent permitted by law, from obtaining any monetary or other personal relief with regard to any charge or claim Plaintiff may file or which may be filed or otherwise brought on Plaintiff's behalf. Nothing in this release is intended to or shall be interpreted to restrict or otherwise interfere with: (i) Plaintiff's obligation to testify truthfully in any forum; or (ii) Plaintiff's right and/or obligation to contact, cooperate

with, provide information to, or participate in any investigation conducted by, any government agency or commission (including but not limited to the EEOC, SEC or NLRB). The release also does not include any claims Plaintiff may have for vested and accrued benefits under any benefit plan that is subject to the Employee Retirement Income Security Act of 1974, as amended.

Article VII. Miscellaneous Provisions.

Section 7.01 Voluntariness.

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

Section 7.02 Amendments.

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

Section 7.03 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, or Plaintiff's Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that she has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 7.04 Governing Law.

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

Section 7.05 Entire Agreement.

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

Section 7.06 Waiver of Compliance.

A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 7.07 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 7.08 Attorneys' Fees and Costs.

With respect to this Agreement, neither Plaintiff's Counsel nor any other attorneys acting for, or purporting to act for the Aggrieved Employees, or Plaintiff may recover or seek to recover any amounts for fees, costs, or disbursements from the Released Parties or the Gross Settlement Amount except as expressly provided herein. Defendant shall bear its own attorney's fees and costs, and neither Plaintiff's Counsel, Aggrieved Employees or the Plaintiff shall be responsible for Defendant's attorney's fees and costs.

Section 7.09 Enforcement.

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, but excluding any dispute related to non-payment of the Gross Settlement Amount (which is addressed in Section 7.11 herein), the Parties agree to submit any such dispute(s) first to mediation and/or continued negotiations before mediator Steve Pearl, Esq., prior to seeking to enforce this Agreement with the Court. The Court shall retain jurisdiction, pursuant to Code of Civil Procedure section 664.6 and otherwise as permitted by law, to enforce this Settlement. To the extent any Party seeks to enforce any of the terms of this Agreement in Court or before the Court, the prevailing party shall be entitled to recover his/her/its/their reasonable attorneys' fees and costs.

Section 7.10 Binding.

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

Section 7.11 Default; Notice; Cure; Acceleration; Time is of the Essence.

If the Gross Settlement Amount is not received on the date due, Defendant shall be in default of its obligations under this Settlement. Plaintiff shall e-mail notice of the default to Defendant at mvelthoen@fcoplaw.com. Defendant will then have seven (7) calendar days from the date notice is e-mailed to cure the default. If the default remains uncured for ten (10) calendar days, then all sums remaining unpaid under this Settlement shall be accelerated and become all due and payable and begin to accrue interest at the legal rate. Plaintiff may thereafter move the Court, pursuant to Code of Civil Procedure 664.6, for entry of a judgment against Defendant to reflect this acceleration, the accrual of interest, plus actual attorneys' fees and costs incurred to enforce the judgment and this Settlement. Time is of the essence with respect to all provisions of this Agreement.

Section 7.12 Authority.

Each Party to this Agreement expressly represents and warrants to have the authority necessary to execute this Agreement. Each person signing this Agreement on behalf of a corporation represents that he or she has the authority to agree to the terms hereof and execute this Agreement on behalf of said entity in accordance with the bylaws of such entity and that his or her signature will bind the entity to the terms of this Agreement.

Section 7.13 Escalator Provision.

Defendant has represented that there are no more than 130 Aggrieved Employees who worked no more than 3,334 pay periods during the Settlement Period. Should either of these numbers increase by more than 2%, the Gross Settlement Amount will increase proportionately based on the larger increase. For example, if there are 3,400 pay periods and 132 employees, (i.e. a 2% increase for both), the Gross Settlement Amount will remain unchanged. If there are 3,467 pay periods (i.e. a 4% increase) and 136 employees (i.e. a 5% increase), the Gross Settlement Amount shall increase by 3% (based on the greater increase in excess of the 2% threshold).

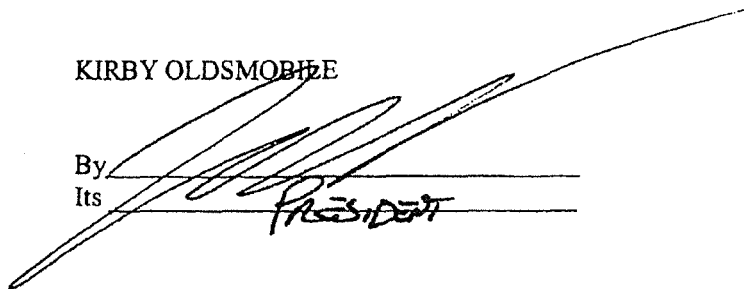
IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth.

APPROVED AND ACCEPTED.

Dated: September __, 2021

KIRBY OLDSMOBILE

By
Its

A large, stylized handwritten signature in black ink, slanted upwards from left to right, crossing over the signature line.

PRESIDENT

Dated: September __, 2021

By
CARLOS CARRILLO

Section 7.12 Authority.

Each Party to this Agreement expressly represents and warrants to have the authority necessary to execute this Agreement. Each person signing this Agreement on behalf of a corporation represents that he or she has the authority to agree to the terms hereof and execute this Agreement on behalf of said entity in accordance with the bylaws of such entity and that his or her signature will bind the entity to the terms of this Agreement.

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APPROVED AND ACCEPTED.

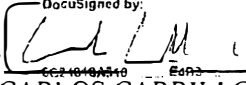
Dated: September __, 2021

KIRBY OLDS MOBILE

By _____
Its _____

October 13, 2021

Dated: September __, 2021

DocuSigned by:
By 
CARLOS CARRILLO

APPROVED AS TO FORM ONLY

Dated: ~~September __, 2021~~
OCTOBER 13, 2021

GAINES & GAINES, ALPC

By *Daniel F. Gaines*

Daniel F. Gaines, Esq.

Alex P. Katofsky, Esq.

Attorneys for Plaintiff

Dated: September __, 2021

FERGUSON CASE ORR PATERSON LLP

By _____

Michael A. Velthoen, Esq.

Attorneys for Defendant

APPROVED AS TO FORM ONLY

Dated: September __, 2021

GAINES & GAINES, ALPC

By _____
Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Attorneys for Plaintiff

Dated: October 2, 2021

FERGUSON CASE ORR PATERSON LLP

By _____
Michael A. Velthoen, Esq.
Attorneys for Defendant

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA**

CARLOS CARRILLO, on behalf of
himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*,

Plaintiff,

v.

KIRBY OLDSMOBILE, a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No. 56-2020-00542491-CU-OE-VTA

**NOTICE OF SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIM
(CAL. LABOR CODE § 2698 *ET SEQ.*)**

You have been identified as a non-exempt California employee of Kirby Oldsmobile ("Defendant") who was employed in California between February 5, 2019 and September 7, 2021 ("Aggrieved Employee").

On June 11, 2021, Plaintiff Carlos Carrillo (the "Plaintiff") commenced a lawsuit in Ventura County Superior Court, case number 56-2020-00542491-CU-OE-VTA (the "Lawsuit") to recover civil penalties. The Complaint alleges that Defendant failed to pay all overtime wages, provide all meal and rest periods, or premium compensation in lieu thereof, timely pay wages due at separation of employment, and issue complete and accurate wage statements. For these alleged violations, Plaintiff seeks penalties pursuant to the California Labor Code's Private Attorneys General Act of 2004, codified at Labor Code § 2698 *et seq.* ("PAGA").

Defendant denies Plaintiff's allegations and disputes all of Plaintiff's claims. The Lawsuit was litigated and following an investigation and a mediation before a third-party mediator, the Parties reached a settlement which takes into account the uncertainties and risks of proceeding with litigation.

The Court approved the settlement on _____ and has determined that the settlement is fair and reasonable. The payment which accompanies this notice is made to you pursuant to the terms of the Settlement.

The Court-approved settlement contains the following release of claims, to which you are bound:

Upon the Effective Date, Plaintiff, on behalf of himself, his heirs, executors, and assigns, the Aggrieved Employees, the LWDA, and the State of California, fully releases and discharges Defendant, and each of its present and former affiliates, parent companies, subsidiaries, divisions, successors, predecessors, and assigns, and each of its respective past and present shareholders, officers, partners, directors, current and former employees, agents, attorneys, insurers, successors, assigns, representatives, accountants, and all persons acting under, by, through, or in concert with any of them (collectively, "Released Parties") from any and all claims, rights, demands, liabilities, and causes of action of every nature and description, under PAGA, which were asserted in the Complaint or which could have been asserted in the Complaint based on the facts pled therein ("Released Claims"), including, but not limited to, claims for violation of violations of Labor Code §§ 201, 202, 226(a), 226.3, 226(a), 226.7, 510, 512, 1174, 1194 and 1198 that accrued during the Settlement Period (from February 5, 2019 through September 7, 2021).

If you have any questions, please contact Gaines & Gaines, APLC, counsel for Plaintiff, at (866) 550-0855.

EXHIBIT B

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6 Calabasas, CA 91301
Telephone: (818) 703-8985
7 Facsimile: (818) 703-8984

8 Attorneys for Plaintiff Carlos Carrillo, on behalf of himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF VENTURA**
12

13 CARLOS CARRILLO, on behalf of
himself and all "aggrieved employees"
14 pursuant to Labor Code § 2698 *et seq.*,

15 Plaintiffs,

16 v.

17 KIRBY OLDSMOBILE, a California
corporation, and DOES 1 through 10,
18 inclusive,

19 Defendants.

CASE NO: 56-2020-00542491-CU-OE-VTA

*Assigned for all purposes to the Hon. Kevin
DeNoce, Dept. 43*

**[PROPOSED] JUDGMENT APPROVING
SETTLEMENT OF PRIVATE ATTORNEYS
GENERAL ACT CLAIMS, AND DISMISSING
ACTION WITH PREJUDICE**

Complaint Filed: June 11, 2020

20
21 The Court has considered the JOINT STIPULATION FOR APPROVAL OF
22 SETTLEMENT AND ENTRY OF JUDGMENT, including the settlement agreement, and the
23 record in this action ("the Litigation"). The matter having been submitted and good cause
24 appearing, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

25 1. This matter ("the Litigation") consists of a representative action by Plaintiff Carlos
26 Carrillo ("Plaintiff") against Kirby Oldsmobile ("Defendant") under the Private Attorneys General
27 Act, codified at California Labor Code section 2698 *et seq.* ("PAGA") for penalties on behalf of
28 the State of California and all non-exempt employees employed by Defendant in California from

1 February 5, 2019 through September 7, 2021 (the “Aggrieved Employees”) asserting violations of
2 Labor Code §§ 201, 202, 226(a), 226.3, 226(a), 226.7, 510, 512, 1174, 1194 and 1198 premised on
3 Defendant’s alleged failure to pay all overtime wages, provide all meal and rest periods, or premium
4 compensation in lieu thereof, timely pay wages due at separation of employment, and issue
5 complete and accurate wage statements. Defendant denies the allegations made by Plaintiff and
6 contends that it provided all required meal and rest breaks, paid all required overtime, and provided
7 complete and accurate wage statements to the Aggrieved Employees.

8 2. After investigation, research, and informal discovery, Plaintiff and Defendant
9 engaged in mediation before Steve Pearl, Esq. After arms-length negotiation, Plaintiff and
10 Defendant reached a settlement, which is embodied in a written settlement agreement (“the
11 Agreement”). The Court has reviewed the Agreement, along with the Stipulation of the Parties and
12 the declaration of counsel for Plaintiff.

13 3. The Court has jurisdiction over the subject matter of the Litigation, the Plaintiff, the
14 Aggrieved Employees, and Defendant. This Judgment shall be binding not only on the named
15 parties to the Litigation but also on all Aggrieved Employees and the State of California, who are
16 hereby barred by the doctrine of res judicata from re-litigating the Released Claims.

17 4. The Court hereby approves the terms set forth in the Agreement and finds that the
18 Agreement is, in all respects, fair, adequate, reasonable, and just and is not arbitrary, oppressive or
19 confiscatory and directs the Parties to effectuate the Agreement according to its terms. The Court
20 finds that the Agreement has been reached as a result of informed and non-collusive arm’s-length
21 negotiations. The Court further finds that the Parties have conducted extensive investigation and
22 research, and their attorneys were able to reasonably evaluate their respective positions. The Court
23 also finds that settlement now will avoid additional and potentially substantial litigation costs, as
24 well as delay and risks if the Parties were to continue to litigate the case. The Court has reviewed
25 the monetary recovery being provided as part of the Agreement and recognizes the significant value
26 afforded to the Labor and Workforce Development Agency (“LWDA”), Plaintiff, and the
27 Aggrieved Employees.

1 5. The Agreement is not an admission by Defendant, nor is this Order a finding of the
2 validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Agreement,
3 nor any document referred to herein, nor any action taken to carry out the Agreement, may be used
4 as an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or
5 against Defendant.

6 6. In accordance with the Agreement, the Defendant shall make a total payment of
7 Two Hundred and Fifty Thousand Dollars (\$250,000.00) (the "Gross Settlement Amount"). The
8 Gross Settlement Amount is the total amount to be paid by Defendant under the Agreement. Under
9 no circumstances will Defendant be obligated to pay any more under the Agreement.

10 7. The relevant time period for the Agreement is February 5, 2019 through September
11 7, 2021 ("the Settlement Period").

12 8. The Gross Settlement Amount will be paid by Defendant to a Settlement
13 Administrator. The Court hereby appoints ILYM Group, Inc. as Settlement Administrator. The
14 Settlement Administrator shall make the following payments from the Gross Settlement Amount,
15 which the Court concludes are fair and reasonable:

- 16 a. The sum of one hundred thousand dollars (\$100,000.00) to counsel for
17 Plaintiff, Gaines & Gaines, for attorneys' fees.
18 b. The sum of twelve thousand dollars (\$12,000.00) to counsel for Plaintiff,
19 Gaines & Gaines, for costs.
20 c. The sum of ten thousand dollars (\$10,000.00) to Plaintiff in exchange for a
21 general release of claims.
22 d. Up to five thousand dollars (\$5,000.00) to the Settlement Administrator for
23 its reasonable fees and expenses.

24 The Settlement Administrator shall make such payments in accordance with the procedures and
25 timing set forth in the Agreement.

26 8. The amount remaining from the Gross Settlement Amount after the payments set
27 forth in Paragraph 7 are made shall be referred to as the Net Settlement Amount. The Settlement
28

1 Administrator shall pay seventy-five (75%) percent of the Net Settlement Amount to the LWDA
2 and twenty-five (25%) percent of the Net Settlement Amount to the Aggrieved Employees. The
3 Settlement Administrator shall divide the twenty-five (25%) percent of the Net Settlement Amount
4 by the number of pay periods worked by the Aggrieved Employees during the Settlement Period,
5 which Defendant represents is three thousand three hundred and thirty-four (3,334) pay periods.
6 Each Aggrieved Employee shall receive a payment from the Settlement Administrator equal to the
7 resulting quotient multiplied by the number of pay periods worked by the Aggrieved Employee
8 during the Settlement Period. The payments to the Aggrieved Employees shall not be subject to
9 payroll taxes or income tax withholding. The Aggrieved Employees will be issued an IRS Form
10 1099 by the Settlement Administrator. The Settlement Administrator shall make such payments in
11 accordance with the procedures and timing set forth in the Agreement.

12 9. The Court further orders, adjudge and decrees that Upon the Effective Date and
13 subject to Defendant's full payment of the Gross Settlement Amount, Plaintiff, on behalf of himself,
14 his heirs, executors, and assigns, the Aggrieved Employees, the LWDA, and the State of California,
15 fully releases and discharges Defendant, and each of its present and former affiliates, parent
16 companies, subsidiaries, divisions, successors, predecessors, and assigns, and each of its respective
17 past and present shareholders, officers, partners, directors, current and former employees, agents,
18 attorneys, insurers, successors, assigns, representatives, accountants, and all persons acting under,
19 by, through, or in concert with any of them (collectively, "Released Parties") from any and all
20 claims, rights, demands, liabilities, and causes of action of every nature and description, under
21 PAGA, which were asserted in the Complaint or which could have been asserted in the Complaint
22 based on the facts pled therein ("Released Claims"), including, but not limited to, claims for
23 violation of violations of Labor Code §§ 201, 202, 226(a), 226.3, 226(a), 226.7, 510, 512, 1174,
24 1194 and 1198 that accrued during the Settlement Period.

25 16. All of the Released Claims are deemed adjudicated and extinguished with
26 prejudice as to the Plaintiff, all of the other Aggrieved Employees, and the State of California.

27 17. The Court further finds that notice of the Agreement has been provided to the
28

1 LWDA as required by PAGA and Labor Code section 2699, subdivision (l)(2), in particular. Any
2 request to intervene in the Litigation and/or Agreement that is filed after the date this Judgment is
3 entered shall be and hereby is deemed untimely.

4 18. Neither the Agreement nor any act performed or document executed pursuant to or
5 in furtherance of the Agreement (a) is or may be deemed to be or may be used as an admission of,
6 or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of the
7 Releasees, or any of them; or (b) is or may be deemed to be or may be used as an admission of, or
8 evidence of, any fault or omission of the Releasees, or any of them, in any civil, criminal or
9 administrative proceeding in any court, administrative agency or other tribunal. Defendant or any
10 of the Released Parties may file the Agreement and/or the Judgment from this Litigation in any
11 other action that may be brought against it or them in order to support a defense or counterclaim
12 based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment
13 bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or
14 counterclaim.

15 22. This action is dismissed with prejudice.

16 23. This Court shall retain jurisdiction, pursuant to Code of Civil Procedure section 664.6,
17 over this action and the Parties and Aggrieved Employees, to the fullest extent necessary to
18 interpret, enforce and effectuate the terms and intent of the Agreement and this Judgment.

19 **IT IS SO ORDERED.**

20
21 Dated: _____, 2021
22

23
24 _____
25 Judge of the Superior Court
26
27
28

1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to
3 the within action; my business address is 27200 Agoura Road, Suite 101, Calabasas, CA 91301

4 _____ (For messenger) my business address is:

5 On October 26, 2021, I served the foregoing document described **DECLARATION OF DANIEL GAINES**
6 **IN SUPPORT OF STIPULATION AND [PROPOSED] ORDER APPROVING SETTLEMENT OF PRIVATE**
7 **ATTORNEYS GENERAL ACT CLAIMS AND DISMISSING ACTION WITH PREJUDICE** on the interested
8 parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

9 **Michael A. Velthoen, Esq.**
10 **Ferguson Case Orr Paterson LLP**
11 **1050 S. Kimball Rd.**
12 **Ventura, CA 93004**

13 X (BY ☒ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was
14 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection
15 and processing correspondence for mailing. It is deposited with United States postal service on that same
16 day in the ordinary course of business. I am aware that on motion of party served, service is presumed
17 invalid if postal cancellation date or postage meter date is more that one day after date of deposit for
18 mailing in affidavit.

19 _____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or
20 other facility regularly maintained by the express service carrier or delivered the sealed envelope to an
21 authorized carrier or driver authorized by the express carrier to receive documents.

22 _____ (BY FACSIMILE TRANSMISSION) On _____, at _____, at Calabasas, California, I served the above-
23 referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of
24 the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-
25 8984 and the telephone number(s) of the receiving facsimile machine was (916) 920-4402. A
26 transmission report was properly issued by the sending facsimile machine, and the transmission was
27 reported as complete and without error. Copies of the facsimile transmission cover sheet and the
28 transmission report are attached to this proof of service.

_____ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-
delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

X (ONLINE TO THE LWDA): I caused the above-described document to be delivered to the Labor Workforce
Development Agency via online process at the PAGA Filing website in accordance with the procedure imposed by the
LWDA.

I certify that the above document was printed on recycled paper.

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

Executed on October 26, 2021, at Calabasas, California.

26 
27 _____
28 BEATRIZ FRANCO