

1. Name of the party submitting the proposed order:
Plaintiffs Evaristo Ayard, et al.
2. Title of the proposed order:
[Proposed] Order Granting Plaintiffs' Motion for Approval of PAGA Settlement
3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: Motion for Approval of PAGA Settlement
 - b. Date and time: 10/5/21, 9:00 a.m.
 - c. Place: Dept. 2
4. The proposed order was served on the other parties in the case.


(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:

Ayard, et al. v. Kuni Redwood Motors, LLC, et al.

CASE NUMBER:

20CV367003

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action.**

a. My residence or business address is (*specify*):

1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266

b. My electronic service address is (*specify*): hahn@maternlawgroup.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):

FISHER & PHILLIPS LLP - Danielle Moor, Esq.; Kathryn M. Evans, Esq.; Phil Simpler, Esq.; Gwen Nuttall; Amanda Funkhouser; Beth Elliot

Attorneys for Defendants Kuni Redwood Motors, LLC, et al.

b. To (*electronic service address of person served*): dmoore@fisherphillips.com; kmevans@fisherphillips.com;

psimpler@fisherphillips.com; gnuttall@fisherphillips.com;

c. On (*date*): October 14, 2021

afunkhouser@fisherphillips.com; bellriott@fisherphillips.com

☒ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

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

Date: October 14, 2021

Hannah Ahn

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

1 MATERN LAW GROUP, PC
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Filed
October 28, 2021
Clerk of the Court
Superior Court of CA
County of Santa Clara
20CV367003
By: fmiller

7 Attorneys for Plaintiffs
8 EVARISTO AYARD, LUKE PUGH
and RAY POOTA, individually, and
9 on behalf of all other aggrieved employees

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA CLARA
12

13 EVARISTO AYARD, an individual, on behalf
of himself and all other aggrieved employees;
14 LUKE PUGH, an individual, on behalf of
himself and all other aggrieved employees; and
15 RAY POOTA, an individual, on behalf of
16 himself and all other aggrieved employees

17 Plaintiff,

18 vs.

19 KUNI REDWOOD MOTORS, LLC, a
Delaware limited liability company; KUNI
20 ENTERPRISES, LLC; an Oregon limited
liability company; KUNI SDA, LLC, a
21 Delaware limited liability company; HOLMAN
NATIONAL RETAIL HOLDINGS, LLC, a
22 Delaware limited liability company; KUNI SDP,
LLC, a Delaware limited liability company;
23 KUNI SDL, LLC, a Delaware limited liability
company and DOES 1 through 50, inclusive,
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25 Defendants
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Case No. 20CV367003

[Assigned for all purposes to the Honorable
Drew C. Takaichi]

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Date: October 5, 2021
Time: 9:00 a.m.
Dept: 2

Complaint filed: June 5, 2020
Trial Date: None Set

*[Filed concurrently with Notice of Motion
and Motion For Approval of PAGA
Settlement; Declarations of Matthew J.
Matern, Evaristo Ayard, Ray Poota, Luke
Pugh, Rebecca Drake and Zachary Lemas]*

~~**PROPOSED**~~ **ORDER**

The Motion for Approval of PAGA Settlement (“Motion”) filed by Plaintiffs Evaristo Ayard, Luke Pugh, Ray Poota, Zachary Lemas and Rebecca Drake, on behalf of themselves and all other aggrieved employees (“Plaintiffs”) came on regularly for hearing on October 5, 2021 at 9:00 a.m., the Honorable Maureen A. Folan, Judge presiding.

Having reviewed Plaintiffs’ Motion; the Declarations of Matthew J. Matern, Evaristo Ayard, Luke Pugh, Ray Poota, Zachary Lemas and Rebecca Drake, and exhibits thereto, including the Private Attorneys General Act Stipulation of Settlement and Release (“Stipulation” or “Settlement”) attached as Exhibit A to the Declaration of Matthew J. Matern, and good cause appearing therefore, the Court hereby finds and orders as follows:

1. The Court, for purposes of this order, adopts all defined terms as set forth in the Stipulation filed in the above-entitled action (the “Action”).

2. The Court has jurisdiction over all claims asserted in the Action, Plaintiffs, the Aggrieved Employees, defined as all current and former non-exempt employees of Defendants, including employees paid commissions who were exempt from overtime compensation at any time from April 1, 2019 to March 30, 2021, and Defendants Kuni Redwood Motors, LLC, Kuni Enterprises, LLC, Kuni SDA, LLC, Holman National Retail Holdings, LLC, Kuni SDP, LLC, Kuni SDL, LLC, and Roseville Volkswagen, LLC (“Defendants”).

3. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2699 *et seq.*, the Court approves the Settlement and finds that it is fair and reasonable and furthers PAGA’s objectives. The Court finds that notice of the Settlement has been provided to the California Labor Workforce Development Agency (“LWDA”), as required by Labor Code § 2699(1)(2).

4. Within ten (10) calendar days after the Effective Date, Defendants shall provide the Settlement Administrator with the PAGA List of employee information for purposes of mailing the PAGA Notice and Settlement checks to the State of California and Aggrieved Employees.

“Effective Date” means the latter of: (a) 61 days after the date on which the Court enters a final order approving this settlement (“Final Order”); or (b) if an appeal, review or writ is sought from the

1 Final Order, the date upon which all appellate and/or other proceedings resulting from the appeal, review
2 or writ have been finally terminated in such a manner as to permit the Final Order to take effect.

3 5. Defendants shall pay the Gross Settlement Sum of \$650,000.00. The Settlement
4 Administrator shall mail each Aggrieved Employee the PAGA Notice, in English and Spanish, and their
5 Individual Settlement Payment, via regular First Class U.S. Mail.

6 6. Upon the Effective Date, all PAGA Employees will release any and all claims asserted in
7 the PAGA Claim or any other claims, under PAGA, that could have been asserted in the Lawsuit, based
8 on the violations of the California Labor Code alleged in the LWDA notices filed by Plaintiffs, including
9 without limitation any and all claims for PAGA penalties for violations of the California Labor Code
10 governing without limitation: meal and rest breaks; unpaid minimum wages, overtime and double time
11 wages; wage statement violations; expense reimbursement; and separation pay violations. Specifically,
12 the Released Claims include claims for civil penalties under PAGA for violations of Labor Code §§ 201,
13 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1198, 2802. The Parties agree and
14 acknowledge that, to the maximum extent permitted by law, the final order entered pursuant to this
15 Settlement will bind all those who would be bound by a judgment if the action had been brought by the
16 LWDA, including Plaintiffs, the L WDA, and the PAGA Employees, with respect to the recovery of civil
17 penalties asserted in the PAGA Claim against the Released Parties.

18 “Released Parties” means Defendants and their present and former officers, directors, members,
19 managers, shareholders, agents, parents, subsidiaries, affiliates, employees, insurers, operators, partners,
20 joint ventures, consultants, attorneys, successors or assigns.

21 Plaintiffs further generally release all claims against the Released Parties arising from their
22 employment with the Released Parties.

23 7. The Court finds the Gross Settlement Sum, the PAGA Allocation, and the methodology
24 used to calculate and pay each Aggrieved Employee’s Individual Settlement Payment are fair, adequate
25 and reasonable, and authorizes the Settlement Administrator to pay the Individual Settlement Payments
26 to Aggrieved Employees in accordance with the terms of the Stipulation. The Court also authorizes the
27 Settlement Administrator to make the PAGA Payment to the LWDA.

1 8. The Court finds that Matern Law Group, PC's ("MLG") request for attorneys' fees in the
2 amount of \$216,666.67, which is 33-1/3% of the Gross Settlement Sum, is reasonable under the lodestar
3 method and as a percentage of the common fund. The Court finds that the number of hours MLG spent
4 prosecuting the Action is reasonable and MLG's hourly rates are reasonable and in line with rates
5 prevailing in the community. The Court awards MLG \$216,666.67 in attorneys' fees to be paid from the
6 Gross Settlement Sum.

7 9. The Settlement limits Plaintiffs' litigation expenses to \$17,000.00. The Court awards
8 MLG \$17,000.00 in expenses to be paid from the Gross Settlement Sum.

9 10. The Court hereby approves Service Awards in the amount of \$5,000.00 each to Plaintiffs
10 Evaristo Ayard, Luke Pugh, Ray Poota, Zachary Lemas and Rebecca Drake for their service as PAGA
11 representatives, for a total of \$25,000.00, to be paid from the Gross Settlement Sum.

12 11. The Court approves Settlement Administration costs in the amount of \$9,000.00 to
13 Simpluris to be paid from the Gross Settlement Sum.

14 12. This Court shall retain jurisdiction with respect to all matters related to the administration
15 and consummation of the Settlement, and any and all claims, asserted in, arising out of, or related to the
16 subject matter of the Action, including but not limited to all matters related to the Settlement and the
17 determination of all controversies relating thereto.

18 13. The parties are to provide a final report and accounting by January 20, 2022. A non-
19 appearance case review hearing regarding submission of the final report is set for
20 January 27, 2022 10AM Dept. 2

21 14. The Court directs that a judgment be entered in accordance with the terms of this Order.

22 15. The Settlement Administrator shall post notice of this Order on its website within seven
23 (7) calendar days of the Court's entry of this Order.

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1 16. Plaintiffs shall submit a copy of this Order to the LWDA within ten (10) calendar days of
2 the Court's entry of this Order and shall file a proof of service with the Court.

Signed: 10/20/2021 04:30 PM

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4 IT IS SO ORDERED.



5 DATED: October 20, 2021

6 HONORABLE MAUREEN A. FOLAN Drew Takaichi
7 Judge of the Superior Court
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I am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to this action. My business address is 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266.

On October 14, 2021, I served the following document or documents:

☒ **By e-mail or electronic transmission.** I caused the documents to be sent to the person at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 14, 2021 at Manhattan Beach, California.

Hannah Ahn