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Attorneys for Plaintiff
Michael Stewart

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF EL DORADO

MICHAEL STEWART, an individual,	)	CASE NO.: PC20200472
	)	[Honorable Judge Dylan Sullivan in Dept 10]
	)	
Plaintiff,	)	DECLARATION OF MICHAEL A.
	)	GOULD IN SUPPORT OF PLAINTIFF'S
	)	UNOPPOSED MOTION FOR APPROVAL
	)	OF PAGA SETTLEMENT
v.	)	
	)	Date:
	)	Time:
	)	Dept: 10
	)	
SHINGLE SPRINGS NISSAN-SUBARU,	)	
INC., and DOES 1 through 25,	)	Complaint Filed: September 23, 2020
	)	Trial Date: None Set
	)	Unlimited Civil
	)	
Defendants.	)	

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DECLARATION OF MICHAEL A. GOULD

I, Michael A. Gould, declare as follows:

1. I represent the Named Plaintiff Michael Stewart in the above mentioned case. I make the statements herein based on personal knowledge and would so testify if called as a witness.

EXPERIENCE

2. I have been an attorney for over thirty-three (33) years and practiced employment/labor law since 1995. I have personally handled numerous matters covering all aspects of employment and labor law, including but not limited to federal and state wage and hour cases, wrongful termination litigation, discrimination cases, administrative appeals involving wage and hour and other employment issues, countless arbitrations, and various other matters involving both traditional labor law (union/management law), and employment law issues in the non-union context.

3. I have tried many employment law cases to verdict. I have tried to judgment in excess of twenty (20) individual plaintiff wage and hour case. Additionally, I am a member of the nation's most prestigious trial lawyers' association-the American Board of Trial Advocates (ABOTA).

4. I have been Plaintiffs' counsel in many wage and hour class actions involving application of California Labor Law which have been certified and/or settled successfully after comprehensive mediation and compromise, including:

- a. Engelson v. Keebler Co., Orange County Superior Court, Case No. 02CC00305;
- b. Mendias v. Randstad North America et al., Los Angeles County Superior Court, Case No. BC269586;
- c. Soto v. Brooks Street Companies, San Bernardino County Superior Court, Case No. RCV062453;
- d. Whiteside v. Gonzalez-Lopez, Inc., Orange County Superior Court, Case No. 03CC08242;

- 1 e. Altamirano v. Kraft Pizza Co., Orange County Superior Court, Case No.
2 03CC00253;
3
4 f. Kelly v. Hickory Farms, Los Angeles Superior Court, Case No. BC311769;
5
6 g. Alvarez v. Beneto, Inc., Los Angeles Superior Court, Case No. BC292601;
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8 h. Pearson v. Club 215, Inc., San Bernardino County Superior Court, Case No.
9 SCVSS106690;
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11 1. Erickson and Maddox v. Bath & Body Works, Inc., San Diego Superior Court,
12 Case No. GIC823899;
13
14 J. Lim v. Victoria's Secret, Orange County Superior Court, Complex, Case No.
15 04CC00213;
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17 k. Martinez v. Auto Zone, Los Angeles Superior Court, Case No. BC311443;
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19 l. Lagese v. TSA Stores, Inc., Los Angeles Superior Court, Case No. BC349078;
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21 m. Serrano v. Graham's Towing. Orange County Superior Court, Case No.
22 05CC00287;
23
24 n. Pinero v. Lawry's Restaurants, Inc., Orange County Superior Court, Case No.
25 05CC00275;
26
27 o. Tilden v. Mastro's Ocean Club Beach Road, LLC, Orange County Superior Court,
28 Case No. 06CC00135;
p. Lopez v. Louis Vuitton U.S. Manufacturing, Inc., Los Angeles Superior Court,
Case No. BC361116;
q. Halawanji v. Advantage Guard Services, Inc., Orange County Superior Court,
Case No. 06CC00158;
r. Padilla v. Dryer's, San Diego Superior Court, Case No. GIC846185;
s. Zacharia v. Big 5, Los Angeles Superior Court, Case No. BC368141;
t. Coles v. Sally Beauty, Los Angeles Superior Court, Case No. BC359524;
u. Reyes v. Andrews' Sons, Inc., San Bernardino Superior Court, Case No.
RCV097205;

- 1 v. Pinkney v. 24 Rail, LLC, San Diego Superior Court, Case No. 37-2009-00083
2 790;
3 w. Fuller v. Kelly Services, Inc., Los Angeles Superior Court, Case No.
4 BC296800;
5 x. Gadzinski v. In-N-Out Burger, Inc., Orange County Superior Court, 30-2008-
6 00180073.
7 y. Myers v. The County of San Bernardino, Central District Court, Case No. 5:14-
8 cv-00245-JGB-DTB;
9 z. Corral v. Watson Laboratory, Inc., Central District Court, Case No. EDCV12-
10 1650-ODW-SPx);
11 aa. Tavis v. Childtime Childcare, Inc. et al, Central District Court, Case
12 No. 10-CV-01111 CJC-JEMx;
13 bb. Wazeer v. SOS Security Incorporated, Central District Court, Case
14 No. CV 09-1227-VBF-FFFMx;
15 cc. Gates v. Washington Mutual Financial Services, Inc., Central
16 District Court, Case No. CV 05-6061 CAS-SSx
17 dd. In Re: Bank of America Wage and Hour Employment Practices Litigation,
18 District of Kansas, Case No. 2: 1 0-md-02138-JWL-KGS
19 ee. Barbosa v. Mediacredit, Central District, Central District, Case No. 5:14-cv-00063-
20 VAP-SP.

21 5. I have been Plaintiff's counsel in many representative PAGA actions
22 and/or settlements, including: *Dominguez v. Patina Restaurant Group*, Case No. 2:19-cv-04441-
23 GW-RAO; *Malone v. Interest Smart Home Loans*, Case No. 30-2016-00878720; *BecerraSouth*
24 *v. Howroyd-Wright Employment Agency*, Case No. 2:18-cv-08348; *Martinez v. Hardin Irvine*
25 *Automotive, Inc.*, Case No. 30-2019-01058860; *Mercado v. Briad Restaurant Group, LLC*, Case
26 No. CIVDS1810171; *Joh v. American Income Life*, Case No. 3:18-cv-06364.

1 6. Because of the above, I believe I am qualified to evaluate representative claims,
2 to evaluate settlement versus trial on a fully informed basis, and, to evaluate the viability of the
3 defenses.

4 **CASE SUMMARY**

5 7. On or about June 9, 2020, my office gave written notice to the LWDA of Shingle
6 Springs' Labor Code violations, alleging that it had violated California Labor Code §§ 510,
7 1174, 1174.5, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, 1197, failing to provide
8 compliant meal periods; failing to provide compliant rest breaks; failing to pay appropriate
9 minimum and overtime wages timely.

10 8. On September 23, 2020, Stewart initiated the instant action by preparing and
11 filing his complaint with a single cause of action under PAGA in El Dorado County Superior
12 Court. (the "Action"). These claims were brought on behalf of current and former salespersons
13 employed by Shingle Springs from September 23, 2019 forward (the "Aggrieved Employees").

14 9. The Parties engaged in much formal and informal discovery prior to resolving this
15 matter. Through formal discovery, Stewart obtained his payroll records, his employment records,
16 and Shingle Springs' written policies and practices. Indeed, the Parties engaged in several
17 rounds of discovery and meet and confer efforts regarding aggrieved employee payroll data and
18 contact information. Informally, Shingle Springs also provided the total number of pay periods.
19 The information provided by Shingle Springs was thoroughly analyzed by Counsel in order to
20 assess the claims and to formulate damage models for settlement purposes. Thereafter, the
21 Parties engaged in back and forth settlement discussions and ultimately resolved the matter. The
22 terms of the Settlement were subsequently memorialized by the Parties in the Joint Stipulation
23 for Settlement and Release of Private Attorneys General Act Representative Action. ("Settlement
24 Agreement"). See attached Exhibit No. 1.

25 **FAIRNESS**

26 10. The proposed settlement is the product of serious, informed and nonocclusive
27 negotiations and is otherwise proper; it should be given approval by the Court.
28

1 11. The settlement obtained on behalf of aggrieved employees and the state is fair and
2 reasonable. The state and aggrieved employees will receive penalties for the wage and hour
3 violations alleged. Despite the risks faced by Plaintiff, including demonstrating liability on all
4 claims, demonstrating penalty damages for all claims, overcoming any manageability arguments,
5 and the legal and factual arguments made by Defendant, Plaintiff was able to obtain a great
6 settlement for the state and aggrieved employees. Plaintiff was able to obtain monetary relief
7 without trial, which would only have increased the fees and costs, thereby obtaining relief in a
8 timely and efficient manner.

9 **ATTORNEYS' FEES AND COSTS**

10 12. My firm's ability, reputation, and decades of experience were critical to success in
11 this case. My firm has successfully prosecuted many complex employment class actions,
12 recovering millions of dollars on behalf of employees in such cases. Moreover, my firm has tried
13 many cases to verdict, as I am a member of the nation's most prestigious trial lawyers'
14 association-the American Board of Trial Advocates (ABOTA). My firm's reputation, skill, and
15 effort in developing evidence supporting liability, damages were key to reaching a
16 favorable settlement in a case against a well- represented and well-funded defendant.

17 13. My firm undertook this action on a purely contingent basis, with no assurance of
18 recovering fees or litigation costs. Despite this lack of assurance, my firm was (and remains)
19 willing to expend considerable time and resources to prosecute the case on behalf of Plaintiff and
20 the aggrieved employees in this matter. For over three (3) years, my firm has committed to this
21 case investigation and litigation, limited its ability to take on other, potentially profitable work
22 for the firm. Moreover, under the terms of the retainer agreement in this case, my firm is
23 entitled to a contingency fee of forty (40%) when the case is set for trial plus reimbursement of
24 all costs and expenses advanced. The requested fee was negotiated with Plaintiff on behalf of the
25 aggrieved employees at the commencement of the litigation.

1 14. Under the terms of the settlement, Defendant has agreed to pay, subject to
2 approval by the Court, 30% of the settlement fund, Twelve Thousand Dollars (\$12,000.00) in
3 attorney's fees for the Gould Law Firm's prosecution of this case.

4 15. My firm placed its own resources at risk to investigate, prosecute, and resolve this
5 action. My firm has advanced costs and expenses in the amount of \$1,994.57 in prosecuting this
6 Action. (see attached Exhibit No. 2). All costs advanced were necessary in prosecuting this
7 action on behalf of aggrieved employees and were reasonable in their amount.

8 **PAGA SERVICE AWARD**

9 16. I believe that the PAGA Service Award sought for Stewart is fair and reasonable.
10 My office spent numerous hours in consultation with Stewart from the inception of this case. The
11 enhancement takes into consideration the time, effort, and expenses incurred by the
12 representative in coming forward to litigate this matter on behalf of all aggrieved employees.
13 Additionally, Stewart was at risk for potentially paying Defendant's costs, in the event
14 Defendant prevailed at trial. Stewart provided me with relevant and helpful information for this
15 lawsuit. Stewart has been involved in all stages of the litigation from the investigation state to
16 Court approval. Stewart assisted in drafting discovery, looked for and produced documents,
17 assisted in settlement negotiations, responded to discovery requests, and made himself available
18 to answer questions and review documents.

19 **SERVICE LWDA**

20 17. My firm served a copy of the proposed Settlement on the LWDA via electronic
21 upload on March 5, 2024.

22 I declare under penalty of perjury that the foregoing is true and correct under the laws of
23 the State of California. Executed this 5th Day of March, 2024, at Tustin, California.

24 

25 _____
26 Michael A. Gould

Exhibit No. 1

1 Michael A. Gould (SBN 151851)
Aarin A. Zeif (SBN 247088)
2 THE GOULD LAW FIRM
A Professional Corporation
3 161 Fashion Lane, Suite 207
4 Tustin, California 92780

5 *Attorneys for Plaintiff*

6 David J. Reese (SBN 184682)
Robert A. Lopez (SBN 315623)
7 FINE, BOGGS & PERKINS LLP
111 West Ocean Blvd., Suite 2400
8 Long Beach, California 90802
9 Telephone: (562) 366-0861

10 *Attorneys for Defendant*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF EL DORADO**

13 MICHAEL STEWART, an individual,

14 Plaintiff,

15 v.

16 SHINGLE SPRINGS NISSAN-SUBARU,
17 INC., and DOES 1 through 25,

18 Defendants.

Case No.: PC20200472

**JOINT STIPULATION FOR
SETTLEMENT AND RELEASE OF
PRIVATE ATTORNEYS GENERAL ACT
REPRESENTATIVE ACTION**

1 Plaintiff Michael Stewart (“Plaintiff”) and Defendant Shingle Springs Nissan-Subaru,
2 Inc., (“Defendant”) (collectively the “Parties”), by and through their counsel of record, enter into
3 the following Joint Stipulation for Settlement and Release of Plaintiff’s claims under the
4 California Labor Code Private Attorneys General Act (the “PAGA”), Labor Code sections 2698
5 *et seq.* (hereinafter the “Settlement”).

6 **BACKGROUND**

7 On June 9, 2020, Plaintiff Michael Stewart gave written notice pursuant to the PAGA,
8 Labor Code section 2699.3(a), by certified mail to Defendant and online to the State of California
9 Labor and Workforce Development Agency (“LWDA”) of his intent to assert a claim under
10 PAGA for violations of specified Labor Code provisions. The Notice is attached hereto as

11 **Exhibits A.**

12 The LWDA has not issued any citations related to the violations alleged.

13 On September 23, 2020, Plaintiff Stewart filed his Complaint in this action, asserting a
14 cause of action for penalties under PAGA.

15 Following extensive discovery, the Parties came to a settlement. After additional arm’s-
16 length negotiations, the Parties entered into this Joint Stipulation.

17 As required by PAGA, Plaintiff will submit this Settlement and a stipulation for the
18 approval of this Settlement to the LWDA, at the same time they are submitted to the Court to
19 effectuate approval of this Settlement.

20 **TERMS OF SETTLEMENT**

21 The Parties agree as follows:

22 1. The relevant employment period and release period covered by this Settlement is
23 September 23, 2019 to the date the Court enters its Order approving the PAGA settlement
24 (hereinafter the “PAGA Period”).

25 2. The group of alleged aggrieved employees that Plaintiff represents in this Action
26 and that are hereby covered by this Settlement is: all salespersons, including vehicle salespersons,
27 finance salespersons, parts salespersons, and service salespersons, who worked for Defendant
28 during all or part of the PAGA Period. This group shall hereinafter be referred to as the “PAGA

1 Group Members.”

2 3. Defendant warrants and represents that the total number of PAGA Group
3 Members is approximately 28 persons, including Plaintiff, and that this Settlement is based on
4 data estimated showing of 1,110 semi-monthly pay periods as of April 2022.

5 4. The Parties believe this Settlement is fair, adequate, and reasonable. The Parties
6 agree that this Settlement was entered into following arm’s-length negotiations and in the context
7 of adversarial action, including extensive exchange of documents and data relating to the PAGA
8 Group Members, and taking into account all relevant factors, present and potential. The Parties
9 further acknowledge that they are each represented by competent counsel and that they have had
10 an opportunity to consult with their counsel regarding the fairness and reasonableness of this
11 Settlement.

12 5. This Settlement is a compromise of highly disputed claims. Defendant denies any
13 and all liability in this Action. Nothing in this Settlement is intended or will be construed as an
14 admission by Defendant that any of Plaintiff’s claims in this lawsuit have merit or that Defendant
15 has any liability to Plaintiff or the Aggrieved Employees with regard to the Released Claims as
16 they are defined herein.

17 6. This Settlement contemplates the: (a) entry of an Order by the Court approving the
18 terms described herein; (b) dismissal of the Action in its entirety with prejudice; and (c) release
19 by Plaintiff, the PAGA Group Members, and the LWDA, for any and all Released Claims as set
20 forth in this Settlement.

21 7. Effective Date. The Effective Date of this Settlement is the date on which all of
22 the following events have occurred: (1) entry of the Court’s Order approving this Settlement, and
23 (2) entry by the Court of a stipulated judgment of dismissal.

24 8. PAGA Group Members’ Released Claims. Upon the Effective Date and subject to
25 Defendant’s full payment of the Gross Settlement Fund, and in exchange for the consideration,
26 undertakings, and covenants given by Defendant in this Settlement, Plaintiff, all PAGA Group
27 Members, and the State of California, shall be deemed to have fully, finally, and forever released,
28

1 relinquished, and discharged Defendant from any and all civil penalties which could be assessed
2 upon and collected from Defendant under PAGA for known and unknown violations of
3 California Labor Code sections 201-204, 210, 218.5, 226, 226.7, 510, 512, 1194, 1194.2, and
4 1197 and based upon the facts as alleged in the LWDA Notice and arising during the PAGA
5 Period while employed in California. Collectively, as described herein, the claims to be released
6 are the “Released Claims.” This Settlement does not seek to release any other claims or remedies
7 available to PAGA Group Members with respect to any other violations of the Labor Code not
8 specifically included herein.

9 9. Plaintiff’s Released Claims. Upon the Effective Date and subject to Defendant’s
10 full payment of the Gross Settlement Fund, Plaintiff Michael Stewart shall be deemed to have
11 fully, finally, and forever released Defendant from any and all claims, obligations, demands,
12 actions, rights, causes of action, and liabilities against the Defendant, of whatever kind and
13 nature, character, and description, whether in law or equity, whether sounding in tort, contract,
14 federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law,
15 whether known or unknown, and whether anticipated or unanticipated, including unknown claims
16 covered by Civil Code Section 1542, arising through the date he signs this Agreement, for any
17 type of relief, including, without limitation, claims for wages, damages, unpaid costs, penalties,
18 liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or
19 equitable relief arising from or related to his employment with Shingle Springs Nissan-Subaru,
20 Inc . Without limiting the generality of the foregoing, the release of claims by Plaintiff is a
21 complete general release. The claims released herein by Plaintiff include, but are not limited to,
22 the Released Claims, as well as any other claims under any provision of the California Labor
23 Code or any applicable California Industrial Welfare Commission Wage Orders, and claims
24 under local, state, or federal discrimination statutes, including, without limitation, the California
25 Fair Employment and Housing Act, California Government Code §§ 12940 *et seq.*; the Unruh
26 Civil Rights Act, California Civil Code §§ 51 *et seq.*; the California Constitution; Title VII of the
27 Civil Rights Act of 1964, 42 U.S.C. §§ 2000 *et seq.*; the Americans with Disabilities Act, 42

1 U.S.C. §§ 12101 *et seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C.
2 §§ 1001 *et seq.*; the Age Discrimination in Employment Act and all of their implementing
3 regulations and interpretive guidelines; claims for harassment, discrimination, retaliation and
4 allegedly unpaid wages. With respect to the released claims as described in this Section, Plaintiff
5 shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law,
6 the provisions, rights, and benefits they may otherwise have had pursuant to Section 1542 of the
7 California Civil Code, which provides as follows:

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

13 Plaintiff understands and acknowledges that the significance and consequence of this
14 waiver of California Civil Code Section 1542. Plaintiff acknowledges that he consciously intend
15 these consequences even as to claims for injuries that they do not know exist and which, if
16 known, would materially affect their decision to execute this Agreement, regardless of whether
17 their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other
18 cause.

19 **Monetary Terms**

20 10. **Gross Settlement Fund.** Defendant agrees to pay the non-reversionary gross sum
21 of Forty Thousand Dollars (\$40,000) (the “Gross Settlement Fund”). The Parties agree that the
22 Gross Settlement Fund represents a fair and reasonable recovery in light of the value of the
23 disputed civil penalties that are recoverable under PAGA.

24 11. The Gross Settlement Fund comprises the following four components: (i) the
25 amount allocated for penalties recoverable under PAGA (“PAGA Amount”); (ii) the amount
26 allocated for reasonable attorneys’ fees and costs pursuant to Labor Code section 2699(g)(1)
27 (“Attorneys’ Fees and Costs”); (iii) general release payment for the named Plaintiff, as approved
28 by the Court; and (iv) the amount allocated for administration of the settlement by a third party
administrator, the Settlement Administrator (“Administration Costs”).

1 12. The PAGA Amount shall be the net sum of the Gross Settlement Fund less the
2 Attorneys' Fees and Costs, general release payment, and Administration Costs. The PAGA
3 Amount shall be allocated and distributed as follows:

- 4 a. The PAGA Amount shall be divided between the LWDA and all PAGA Group
5 Members, with 75 percent allocated to the LWDA and 25 percent allocated to the
6 PAGA Group Members ("PAGA Group Member Amount"). The PAGA Group
7 Member Amount shall be distributed pro rata among all PAGA Group Members
8 based upon the total number of pay periods they worked for Defendant in
9 California during the PAGA Group Member's employment during the PAGA
10 Period, determined as follows: The PAGA Group Member Amount shall be
11 divided by the total pay periods of employment in California of all PAGA Group
12 Members during the PAGA Period to determine the Individual Pay Period
13 Amount. Each PAGA Group Member's payment amount shall then be determined
14 by multiplying the PAGA Group Member's total pay periods of employment in
15 California during the PAGA Period by the Individual Pay Period Amount.
- 16 b. One hundred percent (100%) of the PAGA Amount will be considered penalties
17 that are not subject to local, state or federal tax withholdings or taxes. If required
18 by law, the Settlement Administrator shall issue a Form 1099 to each PAGA
19 Group Member for all payments issued to each of them under this Settlement.

20 13. Attorneys' Fees and Costs. Plaintiff's counsel will seek approval of attorneys' fees
21 of up to thirty percent (30%) of the Gross Settlement Fund, estimated to be a total of Twelve
22 Thousand Dollars (\$12,000), and out-of-pocket costs of no more than \$2,500 both to come from
23 the Gross Settlement Fund. Defendant does not and will not object to these requests up to and
24 including these amounts. The Settlement Administrator will issue a Form 1099 to Plaintiff's
25 Counsel for all payments made to each of them under this Settlement. Any portion of the
26 requested amount which is not approved by the Court shall revert to and become part of the
27 PAGA Amount.

1 14. Administration Costs. The Parties have selected CPT Group, Inc. to act as Settlement
2 Administrator in this action. CPT Group, Inc. has agreed to perform all necessary settlement
3 administration duties for a fee not to exceed ____ Dollars (\$ 6,000.00). These duties shall include,
4 without limitation, mailing settlement notices; performing necessary “skip traces” on notices
5 returned as undeliverable; distributing the Gross Settlement Fund in accordance with the Court’s
6 order; calculating the PAGA Amount (including LWDA Payment, and pay period-based
7 payments to PAGA Group Members); and preparing and mailing all settlement checks and Forms
8 1099.

9 15. General Release Payment for Name Plaintiff. Plaintiff will seek approval of an
10 enhancement payment/general release payment up to Seven Thousand Five Hundred Dollars
11 (\$7,500) to come from the Gross Settlement Fund. Defendant does not and will not object to this
12 request up to and including this amount. The Settlement Administrator will issue a Form 1099 to
13 Plaintiff for the payment made to him under this Settlement. Any portion of the requested amount
14 which is not approved by the Court shall revert to and become part of the PAGA Amount.

15 16. Funding of Settlement. Within fourteen (21) calendar days after the Effective
16 Date, Defendant shall transmit the Gross Settlement Fund to the Settlement Administrator.
17 Defendant shall be jointly and severally liable for the payment of the Gross Settlement Amount.

18 17. Providing Employee Data. Within fourteen (21) calendar days after the Effective
19 Date, Defendant shall transmit all required Employee Data to the Settlement Administrator that is
20 necessary to comply with this Stipulation and the Court’s approval order. For purposes of this
21 paragraph, Employee Data consists of names, last known address, social security numbers or tax
22 identification numbers, employment dates, any other information necessary to calculate the
23 number of semi-monthly pay periods for each PAGA Group Member, and any other data
24 required by the Administrator to timely calculate and issue settlement checks and Forms 1099 to
25 all PAGA Group Members.

26 18. Payment Timing. By no later than thirty (30) calendar days after the Effective
27 Date, the Settlement Administrator will distribute the PAGA Amount, the Court-approved
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Attorneys' Fees and Costs, the general release payment for the named Plaintiff, the LWDA Payment, and the Administration Costs in accordance with the Court's order.

19. At the same time the checks are distributed to the PAGA Group Members, the Settlement Administrator will also distribute to the PAGA Group Members the Notice attached hereto as **Exhibit B**.

20. PAGA Group Members shall not have the right to opt out of or object to the Settlement, which is binding upon the PAGA Group Members.

21. Checks issued to PAGA Group Members will expire one hundred eighty (180) days from the date on which they are issued. Funds associated with any check that has been issued to PAGA Group Members and that is not cashed within one hundred and eighty (180) days shall be sent to the California Controller's Unclaimed Property Fund

22. When issuing the check for the LWDA Payment, the Settlement Administrator shall also send the LWDA a copy of the Court's order approving the settlement, a list of the names of the PAGA Group Members, and the last four (4) digits of each PAGA Group Member's social security number.

23. Within forty-five (45) days of the Effective Date, the Settlement Administrator shall provide a sworn declaration of compliance attesting to the distribution of all settlement checks to the PAGA Group Members, the distribution of the Notice attached hereto as **Exhibit B**, and the submission of the Court's order and payment to the LWDA.

24. All Parties represent that they have not received, and shall not rely on, advice or representations from adverse Parties or their agents regarding the tax treatment of payments under federal, state, or local law. Defendant makes no representations regarding the taxability of any payments made pursuant to this Settlement.

25. Defendant shall not be obligated to make any payments contemplated by this Settlement unless and until the Effective Date first occurs.

Non-Monetary Terms

26. The Parties will cooperate in obtaining an Order from the Court approving this

1 Settlement at the earliest possible date. The Parties agree to use their best efforts to expedite the
2 preparation and submission of whatever documents the Court may require in order to approve
3 this Settlement. The Parties further agree to fully cooperate in the drafting and/or filing of any
4 further documents or filings reasonably necessary to be prepared or filed and shall take all steps
5 that may be requested by the Court relating to, or that are otherwise necessary to the approval and
6 implementation of this Settlement.

7 27. The Court's approval of this Settlement is a condition of the enforceability of this
8 Settlement. If the Court should for any reason fail to approve this Settlement, then (a) this
9 Settlement shall be considered null and void, (b) neither this Settlement nor any of the related
10 negotiations or proceedings, including but not limited to any non-monetary relief agreed to
11 and/or implemented shall be of any force or effect and may not be used against any Party or
12 considered an admission of any kind by any Party, and (c) all Parties to this Settlement shall
13 stand in the same position, without prejudice, as if the Settlement had been neither entered into
14 nor filed with the Court. Invalidation of any material portion of this Settlement shall invalidate
15 this Settlement in its entirety unless the Parties subsequently agree in writing that the remaining
16 provisions shall remain in full force and effect.

17 28. This Settlement is executed voluntarily and without duress or undue influence on
18 the part of or on behalf of any of the Parties, or of any other person, firm or other entity. The
19 terms of this Settlement may be amended only by a written agreement that is both (a) signed by
20 all Parties and their counsel, and (b) approved by the Court. Any waiver of any provision of this
21 Stipulation of Settlement shall not constitute a waiver of any other provision of this Stipulation of
22 Settlement unless expressly so indicated otherwise.

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

25 30. Except as expressly provided herein, Defendant and Plaintiff shall each bear their
26 own attorneys' fees and costs.

27 31. This Settlement contains the entire understanding of the Parties hereto with
28

1 respect to the subject matter contained herein. This Settlement supersedes all prior agreements
2 and understandings among the Parties hereto with respect to the settlement of Plaintiff's PAGA
3 cause of action in the Action.

4 32. This Settlement is the result of a compromise between the Parties, and nothing
5 herein or the consummation hereof is construed or deemed to be an admission or suggestion of
6 liability, culpability, negligence, or wrongdoing on the part of Defendant. Defendant denies any
7 liability or wrongdoing of any kind associated with the claims alleged in the case. Defendant
8 maintains, among other things, that it has complied with all laws in all aspects. Defendant
9 continues to deny vigorously any wrongdoing and assert that, absent this Settlement, it ultimately
10 would prevail in the Action. Each of the Parties hereto has entered into this Settlement solely
11 with the intention to avoid further disputes and litigation with the attendant inconvenience and
12 expense.

13 33. Should any dispute(s) arise among the Parties or their respective counsel regarding
14 the implementation or interpretation of this Settlement, the Parties agree to first meet and confer
15 in a good faith attempt to resolve said dispute. Should the parties be unable to resolve any such
16 dispute, the Parties agree to submit the dispute(s) for mediation with Jill Sperber, Esq. or to a
17 mutually agreeable mediator, should Ms. Sperber be unavailable. Should that mediation also fail
18 to resolve the dispute, the Parties agree to submit the dispute to the Court. To the extent any Party
19 seeks to enforce any of the terms of this Settlement, the prevailing party shall be entitled to
20 recover reasonable attorneys' fees and costs.

21 34. This Settlement shall bind and inure to the benefit of the Parties, the LWDA, and
22 the PAGA Group Members and to their respective successors, assigns, legatees, heirs, and
23 personal representatives.

24 35. Upon entry of the judgment and dismissal of this case pursuant to this Settlement,
25 this Settlement shall be enforceable by the Court pursuant to Code of Civil Procedure Section
26 664.6 or otherwise allowed by law, and the Court shall retain exclusive and continuing
27 jurisdiction of this Action to interpret and enforce the terms, conditions and obligations of this
28

1 Settlement.

2 36. This Settlement, and any amendments, may be executed in one or more
3 counterparts. All executed counterparts and each of them will be deemed to be one and the same
4 instrument. A signed facsimile signature or electronic signature will have the same force and
5 effect as a signed original signature. Any executed counterpart will be admissible in evidence to
6 prove the existence and contents of this Settlement.

7 **IT IS SO STIPULATED.**

8
9 Dated: 8/21/23



Michael Stewart, Plaintiff

11
12 SHINGLE SPRINGS NISSAN-SUBARU, INC.

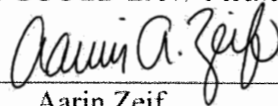
13 Dated: _____

By: Bryant McCarver
Owner

15
16 Approved as to Form:

17
18
19 Dated: 8/22/23

THE GOULD LAW FIRM



By: Aarin Zeif
Michael A. Gould

21
22 *Attorneys for Plaintiff*

23
24 FINE, BOGGS & PERKINS LLP

25 Dated: _____

By: David Reese
Robert Lopez

27
28 *Attorney for Defendant*

1 Settlement.

2 36. This Settlement, and any amendments, may be executed in one or more
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4 instrument. A signed facsimile signature or electronic signature will have the same force and
5 effect as a signed original signature. Any executed counterpart will be admissible in evidence to
6 prove the existence and contents of this Settlement.

7 **IT IS SO STIPULATED.**

8
9 Dated: _____

Michael Stewart, Plaintiff

10
11 SHINGLE SPRINGS NISSAN-SUBARU, INC.

12
13 Dated: 9/17/23

By: Bryant McCarver
Owner

14
15
16 Approved as to Form:

17
18 THE GOULD LAW FIRM

19 Dated: _____

By: Aarin Zeif
Michael A. Gould

20
21
22 *Attorneys for Plaintiff*

23
24
25 Dated: 23 Aug '23

FINE, BOGGS & PERKINS LLP

By: David Reese
Robert Lopez

26
27 *Attorney for Defendant*

Exhibit A

GOULD & ASSOCIATES
A PROFESSIONAL LAW CORPORATION
17822 E. 17TH STREET, SUITE 106
CENTRE BUILDING
TUSTIN, CALIFORNIA 92780
TELEPHONE (714) 669-2850
FACSIMILE (714) 544-0800

June 9, 2020

Labor and Workforce Development Agency
Via Electronic Filing

CERTIFIED MAIL

Alice F. McCarver—Agent for Service for Shingle Springs Nissan-Subaru, Inc.
4331 Swift Circle
Shingle Springs, Ca 95682

Re: Employer Shingle Springs Nissan-Subaru, Inc. with Respect to Employee Michael
Stewart and other aggrieved employees

On behalf of our client, aggrieved employee, Michael Stewart (“Stewart”), we hereby provide you with written notice, pursuant to Labor Code Section 2699 *et seq.*, of Shingle Springs Nissan-Subaru, Inc. violations of the provisions of the Labor Code relating to minimum wages, overtime pay, meal and rest periods, and failing to record hours/wages correctly. The relevant facts and bases for recovery are summarized below.

Stewart commenced work for Shingle Springs Nissan-Subaru, Inc. from August 2017 to September 2019. Stewart worked for Shingle Springs Nissan-Subaru, Inc. as a salesperson. Stewart was illegally paid a set sum of money, which was charged back against his commissions on a monthly basis. Stewart believes that other salespersons were paid in a similar manner. Shingle Springs Nissan-Subaru, Inc. did not pay Stewart overtime pay and/or straight time pay for all hours worked. Stewart was not paid overtime pay at one and one half times the minimum wage for all overtime hours worked. Stewart was also not paid minimum wages for all hours worked, including time spent performing non-sales duties/unproductive time. Since other sales persons were paid in a similar manner, Stewart believes they were not paid overtime compensation properly and minimum wages properly. Stewart believes that other salespersons likewise did not receive the minimum wage for all hours worked, including time not performing “sales” duties or unproductive time. Stewart also was not provided with a thirty (30) minute uninterrupted meal period when he worked over five (5) hours. Stewart also was required to perform his tasks and was not authorized and permitted to take a ten (10) minute rest break every four (4) hours of work. Stewart believes other sales persons likewise did not receive meal and rest periods when they worked. Stewart and aggrieved sales persons were never paid an hour of pay when they were not provided a meal and rest period. Stewart and sales persons also were not paid an extra twenty (20) minutes per day for their rest breaks. Stewart’s paycheck stubs also

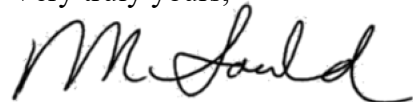
are incorrect because the paycheck stubs fail to include overtime, all minimum wages, and wages and premiums for meal and rest periods. Stewart believes that other sales persons likewise received incorrect paycheck stubs because the stubs failed to include overtime wages, all minimum wages, wages for rest breaks, and premiums for meal and rest periods.

Accordingly, Shingle Springs Nissan-Subaru, Inc. violated the following provisions of California law:

- a. IWC Wage Order and/or Labor Code § 510 by failing to pay overtime for all hours worked over eight (8) hours in one day and/or forty (40) hours in one week to Stewart and aggrieved employees;
- b. California Labor Code § 1174 and § 1174.5 by failing to keep accurate records for Stewart and other salespersons;
- c. California Labor Code §§ 201-204 and 210 by failing to pay all wages for due and owing at the time of termination and/or quitting to Stewart and other salespersons;
- d. California Labor Code § 226 *et seq.*, including 226.3, by failing to provide accurate semimonthly itemized statements to salespersons including, Stewart;
- e. IWC Wage Order and/or Labor Code §§ 226.7 and §§ 512 by failing to provide meal and rest periods as stated above;
- f. IWC Wage Order and/or Labor Code § 1197 by failing to pay minimum wages for all hours worked by Stewart and aggrieved employees;
- g. Failing to pay Stewart and salespersons for rest breaks (See *Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98;

The Labor and Workforce Development Agency hereby is requested to notify me within 60 days whether it will conduct an investigation into this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael A. Gould". The signature is fluid and cursive, with the first name "Michael" and last name "Gould" clearly distinguishable.

Michael A. Gould
Attorney for Plaintiffs

Exhibit B

NOTICE OF SETTLEMENT OF PRIVATE ATTORNEY GENERAL ACT LAWSUIT

Stewart v. Shingle Springs Nissan Subaru
Case No. PC20200472
Superior Court of California, County of El Dorado

1. WHAT IS THE LAWSUIT ABOUT?

Plaintiff Michael Stewart filed a representative action on behalf of California's Labor and Workforce Development Agency against Shingle Springs Nissan-Subaru.

The lawsuit alleges that Shingle Springs Nissan-Subaru failed to pay salespersons all earned wages for all hours worked, including overtime wages, minimum wages, failed to provide meal periods and failed to authorize and permit rest breaks. Shingle Springs Nissan-Subaru denies that it did anything unlawful and that all salesperson were paid properly under California Law.

This lawsuit was brought under California's Private Attorney General Act ("PAGA"), which allows Plaintiff Michael Stewart to act on behalf of California Labor and Workforce Development Agency, and seek the recovery of civil penalties on behalf of "aggrieved employees." Aggrieved employees are other employees, specifically salespersons, who were affected by the violations alleged by Michael Stewart.

2. WHY AM I RECEIVING THIS NOTICE?

Due to the uncertainty and expense of litigation, Michael Stewart and Shingle Springs Nissan-Subaru reached a settlement of this PAGA lawsuit. To resolve the claims brought under the Private Attorney General Act, Shingle Springs Nissan-Subaru agreed to pay \$40,000.00 in civil penalties.

Under the Settlement, salesperson who worked for Shingle Springs Nissan-Subaru from September 23, 2019 to when the Court approved the settlement are entitled to receive a portion of this penalty payment.

Under state law, seventy five percent (75%) of any penalties paid under PAGA must be paid to the Labor and Workforce Development Agency. The remaining 25% of the penalties are paid to the aggrieved employees affected by the violations, on a pro-rata basis, based on the number of pay periods that an employee worked while the challenged bonus payment structure was in place.

As a current or former employee of Shingle Springs Nissan-Subaru you are entitled to a portion of the penalties that Shingle Springs Nissan-Subaru paid to settle the action.

Under the terms agreed to by the parties and approved by the California Labor and Workforce Development Agency and the Judge in this case, you are entitled to a payment of **xxxxxxx**, which is enclosed via check herein. This payment is consistent with the Private Attorney General Act, and is based on the number of pay periods that you were employed by Shingle Springs Nissan-Subaru.

As a result of the settlement, you shall be deemed to have fully, finally, and forever released, relinquished, and discharged Shingle Springs Nissan-Subaru from any and all civil penalties which could be assessed upon and collected from Defendant under PAGA for known and unknown violations of California Labor Code sections 201-204, 210, 218.5, 226, 226.7, 510, 512, 1194, 1194.2, and 1197 and based upon the facts as alleged in the LWDA Notice and arising during the PAGA Period while employed in California. Collectively, as described herein, the claims to be released are the “Released Claims.” This Settlement does not seek to release any other claims or remedies available to PAGA Group Members with respect to any other violations of the Labor Code not specifically included herein.

3. WHAT ARE YOUR OPTIONS?

You do not need to take any action to receive your portion of the penalties. You may cash or deposit the enclosed check. The check will remain negotiable for one hundred and eighty (180) days. Funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than one hundred and eighty (180) days after issuance will be tendered to California Controller’s Unclaimed Property Fund. The Settlement has already been approved by the Judge in this case.

Exhibit No. 2

<i>Stewart v. Shingle Springs</i>	
Expense	Amount
Filing Fee	\$630.23
Service of Summons	\$230.00
One Legal Filing Costs	\$1,134.34
TOTAL	\$1,994.57