

SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIM

This Settlement Agreement and Release of Private Attorneys General Act (PAGA) Claim (“Settlement Agreement”) is made by and between Missael Rodriguez (“Plaintiff”), on behalf of themselves and as representatives for the California Labor Workforce Development Agency (“LWDA”), on one hand, and Defendant CV Automotive Group, Inc. (“Defendant”), on the other hand. Plaintiff and Defendant are collectively referred to herein as the “Parties” and may be individually referred to as a “Party.”

A. Definitions

The following terms, when used in this settlement agreement, shall have the following meanings:

1. “Action” or “Lawsuit” means and refers to the Complaint filed by Plaintiff in the Superior Court of the State of California, County of San Diego, in the matter originally filed on October 5, 2020 (Case No. 37-2020-00035431).
2. “Active Date” means the latest of: (i) the Effective Date if no objection is made or filed to the Settlement; (ii) if an objection is made or filed, but no appeal is filed, the expiration of the deadline for any appeals; and (iii) if an objection is made or filed, and an appeal is filed, the date that an appeal is resolved resulting in a court order approving this Settlement.
3. “Agreement,” “Stipulation,” or “Settlement Agreement,” shall mean this Settlement Agreement and Release of PAGA Claim, including any attached Exhibits.
4. “Attorneys’ Fees and Costs” means the amount of money for which Plaintiff Counsel shall make application to the Court, and the amount shall not exceed one-third of the Settlement Amount with respect to attorneys’ fees (in the amount not to exceed \$30,233.33, and actual costs not to exceed \$10,000.00, which shall be paid out of the Settlement Amount).
5. “Covered Position” means all current and former all non-exempt and “commissioned-exempt” employees of Defendant who were on performance-based compensation plans and who worked in California during the PAGA Period.
6. “Court” (or “Judge”) means the California Superior Court, County of San Diego.
7. “*Cy Pres Recipient*” means Father Joe’s Villages.
8. “Defendant’s Counsel” means and refers to Cory J. King of Ford & Harrison LLP.
9. “Effective Date” means the date that the Superior Court enters the Final Order this Action.
10. “Eligible Pay Period” means any pay period worked in a Covered Position by a PAGA Employee during the Statutory Period.
11. “Final Order” means the Superior Court’s Order approving this Private Attorneys General Act of 2004 (“PAGA”) Settlement.
12. “Funding Date” means seven business days (7) after the Active Date.
13. “LWDA Settlement Proceeds” means the seventy-five percent (75%) of the Penalties Fund that shall be paid to the Labor Workforce and Development Agency.

14. "Net Settlement Amount" is the amount that remains after deducting Plaintiff Counsel's Attorneys' Fees and Costs and the Settlement Administrator's fees and costs.
15. "Notice" means the notice that will be sent to the PAGA Employees with payment after the Final Order is entered by the Court and the Active Date occurs. If notices are sent to any "aggrieved employee" such notices shall not contain the name of any legal counsel for any named aggrieved employee; any questions by PAGA employees are to be sent to the Settlement Administrator, and will be forwarded to Parties' counsel.
16. "PAGA Employees" means all current and former non-exempt and "commissioned-exempt" employees of Defendant who were employed in a Covered Position at any time during the Statutory Period.
17. "PAGA Employees Settlement Proceeds Fund" means the twenty-five percent (25%) of the Penalties Fund that shall collectively be paid to the PAGA Employees.
18. "PAGA Representative Claims" means Plaintiff's PAGA claims under California Labor Code § 2698 *et. seq.* arising from, or related to, the operative facts alleged in the Notice provided to the LWDA by Plaintiff dated July 23, 2020, or the Action asserted, or that could have been asserted based on the facts alleged in that Notice or the Action, including, but not limited to: (1) meal and rest period violations under Labor Code section 226.7; (2) minimum wage violations under Labor Code section 1197; (3) overtime violations under Labor Code section 510; (4) wage statement violations under Labor Code section 226; (5) failure to reimburse business expenses incurred in violation of Labor Code section 2802; and (6) failure to timely pay all wages due upon termination of employment under Labor Code sections 201-203 (collectively, "Released Claims").
19. "PAGA Settlement" or "Settlement" means the settlement of the Action as memorialized in this Agreement.
20. "PAGA Release Period" or "Statutory Period" means July 23, 2019, through the Effective Date.
21. "Penalties Fund" is the Net Settlement Amount allocated as civil penalties payable to the LWDA in accordance with Labor Code section 2699(i). 75% of the Penalties Fund shall constitute LWDA Settlement Proceeds, and 25% of the Penalties Fund shall constitute the PAGA Employees Settlement Proceeds Fund.
22. "Plaintiff's Counsel" shall mean and refers to Eric Yaeckel of Sullivan & Yaeckel Law Group, APC.
23. "Released Parties" shall mean Defendant, companies owned in full or in part by the Defendant, and any parents or subsidiaries, related or affiliated companies, successors and assigns, officers, directors, agents, attorneys, insurers, employees and former employees, heirs, executors, and administrators of Defendant.
24. "Settlement Administrator" means CAC Services Group, LLC.
25. "Settlement Amount" means the maximum settlement amount that Defendant will pay in connection with this Settlement, which is Ninety Thousand, Seven Hundred Dollars and Zero Cents (\$90,700.00).

B. General

26. On July 23, 2020, Plaintiff sent a PAGA Notice to the LWDA. Plaintiff alleges that Defendant had failed to provide Plaintiff and the PAGA Employees with legally mandated rest periods and meal breaks and premiums for said violations, due to Defendant's policies and practices, failed to compensate for

all regular and overtime hours worked, failed to reimburse for business expenses they incurred, and failed to provide the PAGA Employees with accurate itemized wage statements.

27. On October 5, 2018 Plaintiff filed this Action in the San Diego County Superior Court, incorporating his PAGA Notice to the LWDA by reference and alleging six causes of action under PAGA. On August 17, 2021, Plaintiff, on the one hand, and Defendant on the other, participates in a mediation before Michael Young, Esq. of Judicate West, with the Parties reaching an agreement.
28. The Action asserts PAGA Representative Claims for civil penalties and an award of reasonable Attorneys' Fees and Costs, pursuant to PAGA.
29. Defendant denies all of the allegations in the Action, and including all PAGA Representative Claims, and denies that it has committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind.
30. The Parties have conducted a thorough investigation into the facts of the Action. This included exchanging data and information as well as documents relating to the underlying alleged violations. After extensive and lengthy settlement negotiations, the parties believe that the Settlement is fair, reasonable, and adequate. The Parties understand, acknowledge, and agree that this Private Attorney General Act Settlement Agreement constitutes a compromise of Plaintiff and the PAGA Employees' PAGA claim, and that it is the desire and intention of the Parties to effect a final and complete resolution of the PAGA Claims that Plaintiff and the PAGA Employees have against the Released Parties. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendant of liability.
31. Under California Law, the State may assess and collect civil penalties from employers for violations of certain provisions of the Labor Code. (See Cal. Lab. Code §§ 2699 *et seq.*) Under PAGA, however, if an "aggrieved employee" "give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated," and the State thereafter decides not to investigate, as is the case here, or does investigate and determines that a citation against the employer should not issue, the aggrieved employee may, "as an alternative" to enforcement by the State, act as a proxy or agent of the State's labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties "on behalf of himself or herself and other current or former employees." *Id.* "[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees." *Id.*
32. California Labor Code § 2699(1)(2) provides that "The superior court shall review and approve any settlement of any civil action filed pursuant to this part."
33. In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

C. Terms of Settlement

34. Subject to the Court's approval of the Settlement pursuant to Labor Code § 2699(1)(2), which counsel and the Parties agree to recommend in good faith to the Court via *ex parte* application, the Parties agree to the binding settlement of the Action as set forth herein.
35. Upon the Court entering the Final Order and the Active Date occurring, Defendant shall pay a non-reversionary Settlement Amount of Ninety Thousand, Seven Hundred Dollars and Zero Cents (\$90,700.00). The Settlement Amount will be distributed in the following manner:

- a. **Settlement Administrator Costs:** The costs associated with settlement administration (e.g. preparing and mailing payments to LWDA and PAGA Employees, tax documentation, etc.) shall be paid from the Settlement Amount and shall not exceed \$3,000.00. The parties agree to use CAC Services Group, LLC as the Settlement Administrator. If administration costs exceed this amount, the gross amount of the settlement will not increase, and these administration costs will be deducted from the Net Settlement Amount. If the administration costs are less than this amount, the remainder shall be added to the Net Settlement Amount.
- b. **Attorneys' Fees and Costs:** The Parties agree that, subject to the Court's review and approval, Plaintiff's Counsel will be paid up to 33.33% of the Gross Settlement Amount, plus actual costs of litigation not to exceed \$10,000.00. Should the Court award a lesser sum of the Settlement Amount as attorneys' fees and costs, the remainder shall be added to the Net Settlement Amount.
- c. **Representative Service Award:** In recognition of Plaintiff's effort and work in prosecuting the Action for the benefit of the State of California and PAGA Employees and the risks and burdens for the payment of costs in the event of loss, Defendant agrees that the Plaintiff may receive a Service Award in the amount of Ten Thousand Dollars (\$10,000.00), payable from the Settlement Amount. Defendant agrees not to oppose Plaintiff's application for a Service Award of an amount up to this sum. Defendant will not oppose the request for this Service Award; however, Plaintiff understands and agrees that this Agreement and Release shall remain in full force and effect even if the full amount of Plaintiff's Service Award identified herein is not awarded by the Court.
- d. **Net Settlement Amount:** After deducting Attorneys' Fees and Costs, the Service Award and the Settlement Administration Costs from the Settlement Amount, the remainder forms the Net Settlement Amount (which totals \$ 37,466.67 if the amounts set forth above are approved by the Court). The Net Settlement Amount shall be all inclusive, encompassing all payments to the LWDA and PAGA Employees.
- e. **The Penalties Fund Allocation:** The Penalties Fund of approximately \$37,466.67 shall be allocated seventy-five percent (75%) to the LWDA Settlement Proceeds, which is estimated to total approximately \$28,100.00 (\$37,466.67 x 75%). The remaining twenty-five percent (25%) of the Penalties Fund, \$9,366.67 (\$37,466.67 x 25%) shall be paid to the PAGA Employees on the same pro rata basis as noted above, which shall be referred to as the PAGA Employee's Individual Penalties Share.
- f. **PAGA Employees Settlement Proceeds Fund Allocation:** The payment for each PAGA Employee's share of the PAGA Employee's Settlement Proceeds Fund shall be allocated on a *pro rata* basis as referenced above. Each PAGA Employee's *pro rata* share shall be determined based on the number of Eligible Pay Periods that he or she worked for Defendant in a Covered Position during the Statutory Period, and shall be calculated as follows: The PAGA Employee's Settlement Proceeds Fund will be divided by the total number of Eligible Pay Periods worked by all PAGA Employees during the Statutory Period, and the resulting figure will be referred to as the "Multiplier." The Multiplier will then be multiplied by each PAGA Employee's individual number of Eligible Pay Periods worked to determine each PAGA Employee's *pro rata* share.
- g. **Taxes and Reporting:** Each PAGA Employee's individual Penalties Fund Share will be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 to the respective PAGA Employee and applicable governmental authorities. To the extent

payroll taxes are due as a result of this settlement, they shall come out of the Settlement Amount and the amount paid by Defendant shall not increase.

36. Upon the Effective Date, Plaintiff, as the representative for the State of California, will be deemed to forever completely release and discharge the Released Parties of any and all PAGA Representative Claims for the PAGA Release Period.
37. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985, and *Iskanian v CLS Transport San Diego, LLC* (2014) 59 Cal. 4th 348, 381, a judgment including a Settlement including a dismissal with prejudice of disputed claims (*Boeken v. Philip Morris USA, Inc.* (2010) 58 Cal. 4th 788,793) in “a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding,” which the Final Order shall so reflect (“PAGA Releasees”). Thus, in accordance with *Arias*, *Iskanian*, and *Boeken*, the Final Order shall be binding on the PAGA Employees as to the Released Claims. A statement to this effect shall be included in the Notice sent to the PAGA Employees.

D. Release of Individual Claims by Plaintiff

38. Plaintiff acknowledges and agrees that any and all Individual Claims he may have, if any, are expressly waived and released on the terms and conditions set forth herein and in a separate, concurrently executed Confidential Settlement and Release Agreement (Individual Claims), which is incorporated here by this reference (subject to the Confidentiality provision set forth therein).

E. Settlement Approval and Implemental Procedures.

39. Plaintiff’s Counsel shall prepare an *ex parte* application for approval of the Settlement Agreement pursuant to California Labor Code § 2699(1)(2), advocating that the Settlement is fair, adequate, and reasonable, and Defendant shall not oppose such application and/or motion provided that Plaintiff’s Counsel send drafts of the application and/or motion for approval to Defendant’s Counsel allowing sufficient time for review and comment. Defendant’s Counsel will provide Plaintiff’s Counsel with, and allow Plaintiff’s Counsels to submit to the Court, adequate information related to the Released Claims as may be necessary to obtain approval of the Settlement.
40. Upon the Court entering the Final Order, and within three (3) calendar days after the Active Date, the Settlement Administrator shall send counsel for Defendant electronic wiring instructions to fund the Settlement Amount.
41. Seven (7) business days after the Active Date, Defendant will send to the Settlement Administrator a list of all PAGA Employees including each PAGA Employee’s: (1) full name; (2) last known address; (3) social security number; and (4) the number of Eligible Pay Periods he or she worked in a Covered Position during the PAGA Release Period (the “PAGA Employees List”). This information shall be treated as and remain confidential and shall be used solely to manage the notice and payment process described herein, shall not be disclosed to anyone other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written authorization of Defendant, the individual in question, or by order of the Court.
42. On or before the Funding Date, Defendant shall wire to the Settlement Administrator the non-reversionary Settlement Amount of Ninety Thousand, Seven Hundred Dollars and Zero Cents (\$90,700.00).

43. The Settlement Administrator will perform all settlement administration duties, including (i) performing a National Change of Address (“NCOA”) search to update the addresses of the PAGA Employees, (ii) issuing the Notice and payments to the PAGA Employees, (iii) issuing any required IRS forms, and (iv) issuing payment to the LWDA and Plaintiff’s Counsel.
44. PAGA Employees shall have 180 calendar days after mailing to cash their settlement checks. If any PAGA Employee’s check is not cashed within that period, the check will be voided and a stop-payment will be issued. Any funds in the Settlement Administrator’s account as a result of a failure to timely cash a settlement check shall be paid to the *Cy Pres* Recipient in the name of the PAGA Employee who did not cash the check from which the PAGA Employee may claim the funds. Neither Defendant, Defense Counsel, Plaintiff’s Counsel nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, unauthorized negotiation of settlement checks or failure to timely cash a settlement check within the 180 day period. Pursuant to California Code of Civil Procedure § 384, any unpaid cash residue or unclaimed or abandoned PAGA Employee funds generally attributable to California residents, plus any accrued interest that has not otherwise been distributed pursuant to order of the court, shall be transmitted to the *Cy Pres* recipient.
45. Upon the Court’s entry of the Final Order, Plaintiff and the PAGA Releasees will: (i) be bound by the terms and conditions of this Agreement, and the releases set forth herein; (ii) be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the settlement and the Court’s Final Order; and (iii) be entitled to receive a share of the Net Settlement Amount along with all other PAGA Employees, as set forth herein.

F. Miscellaneous Provisions.

46. **Voiding the Agreement:** The Settlement Agreement shall be voidable and unenforceable as to all Parties herein at the option of either Party if (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties, or (b) the approval of the Settlement is reversed, modified or declared or rendered void. In that event, then neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect, and all parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties shall attempt in good faith to cure any perceived defects in the Settlement to facilitate approval.
47. **Reliance on Data Provided:** This settlement is based on the estimate of approximately 2900 Eligible Pay Periods in the Statutory Period. If, as of the end date of the Statutory Period, the number of Eligible Pay Periods increases by more than seven percent Defendant shall increase the Total Settlement Amount proportionally (i.e. for an increase of eight percent, Defendant shall add an extra 1% to the Settlement Amount, for a ten percent increase in employees Defendant shall add an extra 3% to the Settlement Amount). This agreement notwithstanding, the increase contemplated by this paragraph will not apply if the final number of Eligible Pay Periods is at or within the seven percent limit at the time the parties finalize and file the approval paperwork with the Court, i.e., the reason for an increase beyond seven percent is due to the court’s calendar or unforeseen court-related delays in the approval process.
48. **Compliance with Terms:** The failure to insist upon compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.
49. **Parties’ Authority:** The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

50. **Mutual Full Cooperation**: The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiff's Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's approval of the settlement, and the Final Order.
51. **No Admissions**: It is understood and agreed by the parties that this Agreement represents a compromise and settlement for various matters and that the promises and payments and consideration of this Agreement shall not be construed to be an admission of any liability or obligation by either party to the other party or any other person. Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.
52. **Enforcement Costs**: The parties agree that in the event either party breaches any provision of this Agreement, the prevailing party shall be entitled to all costs and reasonable attorney's fees, to the extent permitted by law, incurred in conjunction with enforcement of this Agreement.
53. **Notices**: Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing sent by overnight delivery service, addressed:

To Plaintiff Missael Rodriguez:

ERIC K. YAECKEL
SULLIVAN & YAECKEL LAW GROUP, APC
2330 Third Avenue
San Diego, California 92101
Telephone: (619) 702-6760
Facsimile: (619) 702-6761

To Defendant:

CORY J. KING
FORD & HARRISON LLP
500 La Terraza Boulevard., Suite 150
San Diego, California 92025
Phone: (858) 214-3951
Facsimile: (858) 214-3949

54. **Construction**: The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement Agreement.
55. **Section Headings**: The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
56. **Modification**: This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.
57. **Governing Law and Jurisdiction**: This Agreement shall be interpreted under the law of the State of California, both as to interpretation and performance.
58. **Entire Agreement**: Except as may be contained in the concurrently executed Confidential Settlement and Release Agreement (Individual Claims) between the Parties, which is incorporated herein subject to the confidentiality provisions set forth therein, this Agreement embodies the entire agreement of all the parties and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between the parties to this Agreement. The parties to this Agreement each acknowledge that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement; that they have not executed this Agreement in reliance on any representation, inducement, promise, agreements, warranty, fact or circumstances, not expressly set forth in this Agreement; and that no representation, inducement, promise, agreement or warranty not contained in this Agreement including, but not limited to, any purported settlements, modifications, waivers or terminations of this Agreement, shall be valid or binding, unless executed in writing by all of the parties to this Agreement. This Agreement may be amended, and any provision herein waived, but only in writing, signed by the party against whom such an amendment or waiver is sought to be enforced.
59. **Binding Nature**: This Agreement, and all the terms and provisions contained herein, shall bind the heirs, personal representatives, successors and assigns of each party, and inure to the benefit of each party, its agents, directors, officers, employees, servants, successors, and assigns.
60. **Counterparts**: This Agreement may be executed in counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument. Fax or electronic copies of original signatures shall be deemed originals for all purposes.

61. **Voluntary and Knowing:** This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the parties hereto. All parties signing this agreement have had an opportunity to consult with an attorney prior to the execution of this Agreement. By signing below, all parties acknowledge that they have read and fully understand and agree to the terms of this Agreement.

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and Release of PAGA Claim as of the date set forth below.

Dated: _____

Missael Rodriguez

CV Automotive Group, Inc.

Dated: _____

Printed: _____

Title: _____

APPROVED AS TO FORM AND CONTENT:

SULLIVAN & YAECKEL LAW GROUP, APC

Dated: _____

ERIC K. YAECKEL
Attorney for Plaintiff, Missael Rodriguez, and
other members of the public similarly situated

FORD & HARRISON LLP

Dated: _____

CORY J. KING
JASON SHON
Attorneys for Defendant, CV Automotive
Group, Inc.