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13 Attorneys for Plaintiffs

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SAN DIEGO-CENTRAL DIVISION

16 CHARLES CRAFT, an individual in
17 his representative capacity on behalf of
18 all Aggrieved Employees,

19 Plaintiffs,

20 v.

21 UAG ESCONDIDO M1, Inc., *et al.*,
22 and DOES 1 through 50,

23 Defendants.

) Case No.: 37-2021-00000982-CU-OE-
) CTL

) **DECLARATION OF THOMAS D.**
) **RUTLEDGE ISO PLAINTIFFS'**
) **MOTION FOR PRELIMINARY**
) **APPROVAL OF CLASS**
) **SETTLEMENT**

) Hearing Date: October 1, 2021
) Time: 9:00 a.m.
) Dept.: 75
) Judge: Hon. Richard Straus

) **[[Prop.] Order, Not. of Mot., MPA,**
) **and Dec. of Ian Pancer filed**
) **concurrently herewith]**

DECLARATION OF THOMAS D. RUTLEDGE

I, THOMAS D. RUTLEDGE, declare and state as follows:

1. I am counsel of record for the named Plaintiff, putative Class, Aggrieved Employees, as the State of California as a quasi-assistant attorney general pursuant to the Private Attorney General Act (PAGA) in this matter. As such, I am fully familiar with the facts, pleadings, and history of this matter. The following facts are within my own personal knowledge, and if called as a witness, I could testify competently to the matters stated herein.

2. This declaration is submitted in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and for an Order: (1) Preliminarily Approving Class Action Settlement; (2) Directing Distribution of Notice of Settlement; and (3) Setting a Hearing for Final Approval of Class Action Settlement.

3. Attached hereto and marked **Exhibit “1”** is a true and correct copy of the Class Action Settlement Agreement (Settlement Agreement).

The Parties.

4. From about August 21, 2019 to November 25, 2019, Defendants employed Plaintiff Charles Craft as a porter whose job was generally to drive vehicles back and forth once customers finished test driving Defendants' vehicles in Escondido.

5. Plaintiff was a nonunion employee paid on an hourly basis.

6. Defendant Penske Automotive Group, Inc. is the parent company of a number of automotive companies in California.

7. Defendant UAG Escondido M1, Inc. is Defendant Penske Automotive Group, Inc.'s subsidiary, and was Plaintiff Craft's employer.

8. As its name implies, Defendant UAG Escondido M1, Inc.'s dealership is in Escondido, California.

9. The putative Class consists of all persons Defendants employed in California as non-exempt employees from October 19, 2019 to the date of preliminary

1 approval of the Settlement (putative Class Period).

2 10. According to Defendants' representations , through counsel, as of the
3 date of mediation approximately five months ago, there are approximately 3222
4 putative Class Members who worked approximately 73448 pay periods.

5 11. Because the PAGA and Class Periods generally overlap, the Settlement
6 Agreement does not provide for a subclass for Aggrieved Employees under PAGA
7 since it is unnecessary.

8 **Material Facts.**

9 12. Before filing this action, Plaintiff Craft, via my co-counsel's office,
10 requested Defendants to provide Plaintiff's personnel file.

11 13. Upon receipt and review of Plaintiff Craft's personnel file, it was
12 apparent that Defendants potentially violated various provisions of the Labor Code.

13 14. We (me and my co-counsel) thereafter conducted a good faith inquiry
14 into the merits of Plaintiff's claims.

15 15. My co-counsel and I spent considerable time reviewing the Named
16 Plaintiff's payroll records and investigating the facts to satisfy ourselves that a
17 representative action was warranted.

18 16. The results of our inquiry warranted the ensuing litigation.

19 17. On November 18, 2019, after significant prelitigation work, Plaintiff
20 Craft, via counsel, sent a letter via certified mail to the Defendants and via online
21 submission to the LWDA to exhaust administrative remedies via PAGA.

22 18. On January 8, 2021, Plaintiff Craft filed a representative PAGA action
23 alleging various wage and hour related claims against Defendants, including unpaid
24 overtime wage, unpaid regular/minimum wage, and erroneous wage statement claims.

25 19. Following a series of detailed discussions between the parties via
26 counsel, counsel engaged in open and frank discussions regarding the merits of this
27 case, its strengths, and weaknesses.

28 20. These discussions led to the parties' agreement to attend private

1 mediation.

2 21. To this end, Defendants agreed to provide Plaintiffs a sampling of
3 employee data, pertinent policy manuals, and details concerning employee data, such
4 as the number of employees employed during the putative Class Period, the, number
5 of workweeks and pay periods, among other material facts

6 22. Defendants subsequently complied with their agreement by providing
7 Plaintiffs with: (i) the total number of putative Class members; (ii) a sampling of wage
8 statements and timesheets for the putative class; (iv) pertinent employment policy
9 documents; (v) an extrapolation of the total number of workweeks and pay periods
10 nonexempt employees worked during the Class and PAGA periods; (vi) the total
11 number of nonexempt employees who worked during the Class and PAGA periods; .

12 23. I and two of my best paralegals reviewed the foregoing records and made
13 an assessment regarding a potential range of the overall unpaid wages owed to the
14 putative Class..

15 24. I used the benefit of my years of experience to review and analyze the
16 payroll records.

17 25. On April 20, 2021, the parties via Zoom attended private mediation
18 before Ms. Jill Sperber, Esquire of Judicate West.

19 26. The mediation lasted all day, but the parties were unable to reach an
20 agreement. Instead, Ms. Sperber gave one week for the parties to accept her proposal.

21 27. In the end, after an arm's-length settlement process, the parties accepted
22 Ms. Sperber's settlement proposal.

23 28. From about May 1, 2021 to September 1, 2021, the parties negotiated the
24 details of the settlement resulting in the Settlement Agreement.

25 29. On September 8, 2021, the parties entered a stipulation to permit Plaintiff
26 Craft to file a First Amended Complaint (FAC), which Defendants intend to file with
27 the Court immediately.

28 30. Upon receipt of the Court's permission, Plaintiffs will file the FAC,

1 which will become the operative Complaint.

2 **Reasons for Settlement.**

3 31. In this litigation, my counsel and I thoroughly reviewed hundreds of
4 pages of documents and engaged in substantial research in preparation for mediation,
5 certification and, if necessary, trial.

6 32. From this, my counsel and I were able to determine the strength of
7 Plaintiffs' claims, the typical nature of the claims, and the commonality of Plaintiffs'
8 claims with those of other putative members of the Settlement Class.

9 33. At all times Defendants have denied and to this day continue to deny
10 doing anything wrong except for causing a few minor technical violations of the law
11 for which no one truly suffered harm.

12 34. Before mediation, counsel for each of the respective parties worked
13 together to create a meaningful mediation environment.

14 35. Before mediation, Defendants provided Plaintiffs with a sampling
15 consisting of hundreds of pages of documents, including pay plans, wage statements
16 and time records, statistical information concerning the various categories of
17 employees and their pay, pertinent employment policies, and information regarding
18 the size of the Class and PAGA Group (including workweeks and pay information)
19 which evidence we examined helping Plaintiffs' Counsel gauge the strengths and
20 weaknesses of Plaintiffs' claims..

21 36. I used my best efforts, as informed by my extensive training and
22 experience, to review the documents produced.

23 37. This examination provided us with valuable information regarding the
24 strengths and weaknesses of Plaintiffs' claims.

25 38. At all times Defendants have denied and to this day continue to deny
26 doing anything wrong except for causing a few minor technical violations of the law
27 for which no one truly suffered harm.

28 39. The case settled on the terms set forth in the Settlement Agreement in

1 part because Defendants believe that because of the substantial expense of litigating
2 the Action, the length of time necessary to resolve the issues presented herein, the
3 inconvenience involved, and the concomitant disruption to their business operations,
4 that settlement was in their best interest.

5 40. Whereas Plaintiff alleges he used a personal cell phone to communicate
6 with the dealership while he was shuttling vehicles around the car lot, Defendants
7 contend the cell phone use was rare and unnecessary, and that Defendants provided a
8 two-way radio for Plaintiff to use, making the cell phone use optional and for the
9 convenience of Plaintiff only; whereas Plaintiff claims he was unable to clock in due
10 to the inaccessibility of the time clock early in the morning, Defendants contend this
11 alleged violation, if it took place at all, was confined to the one dealership where
12 Plaintiff worked and to what they claim is a very limited number of employees who
13 arrive very early in the morning, before the dealership doors might all be unlocked;
14 whereas Defendants contend that, to the extent employees may not be compensated
15 for time submitting to drug tests, they are not entitled to compensation for this time
16 and, if they are, the time spent is minimal; whereas Plaintiff alleged that Defendants
17 neglected to accurately indicate the net pay on Plaintiff's pay stubs, instead
18 erroneously reporting his net pay as "0.00"; Defendants contend, however, that the
19 wage statements Plaintiff are relying on were not in fact the statements issued to him -
20 or to Defendants' other employees - with their wages; whereas rather, Defendants
21 claim the copies Plaintiff points to were produced after the fact by a payroll company
22 and turned over with the personnel file - not the statements actually issued to Plaintiff
23 contemporaneously with his wages; and whereas furthermore, the pay statements in
24 the sampling Defendants produced do not suffer from the infirmity of which the
25 Named Plaintiff complains.

26 41. Nonetheless, Defendants have concluded that further litigation would be
27 protracted and expensive, and it is desirable that the Action be fully and finally settled
28 in the manner and upon the terms and conditions set forth in the Settlement

1 Agreement.

2 42. To be more specific, Defendants maintain that the violations Plaintiffs
3 allege Defendants committed if they occurred at all, rarely occurred and when they
4 did occur, happened only at a small number of dealerships and were not
5 companywide violations.

6 43. Defendants likewise maintained that class certification would be difficult
7 due to excessive individual inquiries over where, how often, and why the violations
8 allegedly occurred.

9 44. After the investigation undertaken and analysis performed by Plaintiff,
10 through Class Counsel, into the claims of the putative Class, the potential recovery,
11 the sharply disputed factual and legal issues involved in this litigation, the risks of
12 continuing the litigation and potential appellate issues in complex actions such as this,
13 the difficulty of maintaining a class action, and the meaningful payments members of
14 the Settlement Class will receive because of this Agreement, that settlement is in the
15 best interest of the Settlement Class..

16 45. This settlement is the result of extensive, arms' length negotiations.

17 46. My co-counsel and I believe this settlement is fair and reasonable to the
18 Settlement Class .

19 47. Lending support for the reduction of PAGA penalties, Defendants
20 provided evidence that demonstrate there was a significant drop in the number of
21 employees Defendants employed during periods impacted by COVID.

22 48. We recognize that Courts have broad discretion in the amount that
23 Courts may award in PAGA penalties.

24 49. In light of the difficult economic times Defendants encountered during
25 the PAGA period, and in light of the continuing uncertainty surrounding the
26 pandemic and its impact on the economy, there is a significant possibility that the
27 Court could be very lenient in its imposition of PAGA penalties. .

28 50. PAGA penalties, after all, are discretionary per the Labor Code.

51. In considering whether to reduce PAGA penalties, courts may evaluate factors such as whether the employer's violations were harmless, whether the violations occurred because the employer simply lacked awareness of the violations, whether the employer took prompt measures to comply with the law upon being notified of its violations, and the employer's inability to pay. See *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, at 1135-36 (2012) (affirming a 30% reduction of a PAGA award where employer was not financially able to pay the penalties); *Liv. A Perfect Day Franchise, Inc.*, 2012 WESTLAW 2236752, *15 (N.D. Cal., 2012) (denying PAGA penalties for violation of California Labor Code § 226 as redundant with recovery on a class basis of wage statement penalties pursuant to California Labor Code § 226(e)); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504 (2018) (upholding a lower court's significant reduction of PAGA penalties); *Kaanaana et al. v. Barrett Business Services Inc.*, Case No. BC496090 (Super Ct. Los Angeles Cty., Cal.) (reducing PAGA penalties from \$409,950 to \$53,294 after finding the maximum statutory penalty amount to be unjust, arbitrary, oppressive, or confiscatory); *Aguirre v. Genesis Logistics*, 2013 WESTLAW 10936035, *3 (C.D. Cal. 2013) (reducing PAGA penalty for past wage statement violations by nearly 75% where the full penalty amount would have been punitive and PAGA penalties were largely duplicative of wage statement penalties); *Fleming v. Covidien, Inc.*, 2011 WESTLAW 7563047, *4 (C.D. Cal. 2011) (reducing PAGA penalties by more than 80% where the "aggrieved employees suffered no injury due to the erroneous wage statements, and made no complaint of the errors or omissions contained therein prior 25 to filing suit.").

52. Based on the totality of the circumstances and the wide latitude Courts have in determining the amount of PAGA penalties, we believe it is in the interest of the class to accept this settlement rather than be overzealous in the pursuit of PAGA penalties. .

Experience and Views of Counsel.

1 53. The Law Office of Thomas D. Rutledge consist of me, one associate,
2 several paralegals, and support staff during all times relevant to this litigation.

3 54. At all times, I have been an attorney of record in the above-entitled
4 action.

5 55. I maintain an office in San Diego County.

6 56. I have been licensed to practice law for more than 26 years.

7 57. Before practicing law, from about April 1987 to April 1994, I served in
8 the U.S. Army National Guard in various capacities: First, as a Private First Class in a
9 combat engineer's unit; and in 1990, after receiving my commission via the
10 Massachusetts' State Officers' Candidate School, as a field artillery officer, mortar
11 platoon leader, and infantry company executive officer.

12 58. In 1990, I received a B.A. in History and Political Science from the
13 University of Massachusetts, Boston, Massachusetts.

14 59. In 1992, I received a C.S.S. in Management and Administration from
15 Harvard University, Cambridge, Massachusetts.

16 60. In 1995, I received a J. D. from Temple University and became a
17 member of the State Bars of Florida and Massachusetts.

18 61. In 1999, I was admitted to the California Bar.

19 62. I am an active member in the San Diego County Bar Association (and
20 several committees therein, such as the Labor and Employment Law Section,
21 Litigation Section, Family Law Section, the California Employment Lawyers
22 Association, Consumer Attorneys of San Diego ("CASD"), National Employment
23 Lawyers Association, and the Consumer Attorneys of California.

24 63. I am the former Co-Chairman to the San Diego County Bar Association
25 Labor and Employment Law Section.

26 64. I am a former Board of Director for CASD.

27 65. I am a former U.S. Navy Judge Advocate General's ("JAG") Corps
28 attorney.

1 66. From 1995 to 2008, I served in various capacities as a prosecutor,
2 defense attorney, tax officer, and staff judge advocate in the U.S. Navy JAG Corps
3 handling hundreds of criminal and civil litigation matters.

4 67. I served a total of 20 years in the U.S. military retiring from the U.S.
5 Naval Reserve in 2008.

6 68. From 2002 to 2004, I was a litigation associate at Christensen, Miller,
7 Fink, Jacobs, Glaser, Weil & Shapiro LLP in Los Angeles, California, a firm of more
8 than 100 lawyers at that time, working on complex litigation.

9 69. From 2004 to 2009, I was a litigation associate for Branton & Wilson,
10 APC, a firm of more than 15 lawyers at that time, working mostly on employment
11 law matters (defense and plaintiff).

12 70. From 2009 to the present, I have focused my practice exclusively on
13 prosecuting employment law claims on behalf of employee-plaintiffs, with a very
14 small amount of my practice devoted to personal injury, landlord-tenant, and family
15 law matters.

16 71. All my employee-plaintiffs cases, including this case, are accepted on a
17 nothing down contingency fee basis.

18 72. I personally have represented hundreds of plaintiffs in over three dozen
19 class and/or representative (Private Attorney General Act) actions prosecuting wage
20 and hour claims against employers, more than ten of which were certified as class
21 actions. (See, e.g., *Julio, et al. v. Express Tires*, S.D. Superior Court Case No.: 37-
22 2010-00097801; *Epton v. ADP TotalSource, et al.*, U.S.D.C. Case No.: 11cv0856-JM;
23 *Tuter, et al. v. King's Seafood Company, LLC, et al.*, San Diego Superior Court Case
24 No.: 37-2011-00084756; *Crosby v. CHMB*, San Diego Superior Court Case No.: 37-
25 2011-0087583-CU-OE-CTL; *Diego v. JMS Properties LLC, et al.*, San Diego
26 Superior Court Case No.: 37-2013-00056177-CU-OE-CTL; *Mitchell, et al. v. Phone*
27 *Ware Inc., et al.*, San Diego Superior Court Case No.: 37-2014-00008449-CU-OE-
28 CTL; *Long, et al. v. Stanley Black & Decker, Inc., et al.*, U.S.D.C. Case No.:

1 14CV1246 JLS BGS; *Villagrana v. 7-Eleven*, San Diego Superior Court Case No.:
2 37-2014-00008449-CU-OE-CTL; *Parnell, et al. v. Harte-Hanks Shoppers, Inc., et al.*,
3 Orange Superior Court Case No.: 10-2014-00736236-CU-OE-CXC; *Martz v. T.R.L.*
4 *Systems, Inc.*, San Bernardino Superior Court Case No.: CIVDS1515312; *Rosentein v.*
5 *Pratt and Whitney, et al.*, U.S.D.C. Case No.: 15CV2183 JM/JLB; *Don v. Penn*, San
6 Diego Superior Court Case No.: 37-2016-00025005; *Scott v. Coastal Trans. Serv.*,
7 San Diego Superior Court Case No.: 37-2016-00020248; *Horton v. Neostrata*,
8 U.S.D.C. Case No.: 16CV2189 AJB JLB; *Velez v. CoWorx Staffing Services LLC*,
9 San Bernardino Superior Court Case No.: CIVDS1803229; and many more).

10 73. I have attended dozens of lectures presented by legal professionals on the
11 topic of prosecuting class action litigation in the last 15 years, I have tried wage and
12 hour cases in the Superior Court of California, I have appeared before the Labor
13 Commissioner on scores of wage claims, and I have handled the representation of
14 parties in dozens of mediations before well-known mediators, such as Mark Rudy,
15 Robert Kaplan, Jeff Ross, Michael Dickstein, and the Honorable Judge Herbert B.
16 Hoffman (Ret.).

17 74. This settlement is the result of extensive, arms' length negotiations and is
18 fair and reasonable to the Settlement Class.

19 **Benefit to Class Members.**

20 75. After deductions, the Net Settlement Amount will be approximately
21 \$328,333 to the Class.

22 76. If this Honorable Court approves this Settlement Agreement, there are no
23 opt-outs, and there is a 100% participation rate (i.e., no opt-outs), members of the
24 Settlement Class will receive an average payment of about \$102 apiece
25 (\$328,333/3,222),

26 77. Of course, these numbers are a rough estimate and are based on figures
27 Defendants provided five months ago.

28 78. The actual number each member of the Settlement Class receives

1 depends on the number of weeks that a member worked, the number of opt-outs,
2 additional workweeks added since the date of mediation, among other things, but we
3 believe this settlement is very good for the Class.

4 79. Viewed in light of the overall damages Plaintiffs could have achieved if
5 this case went to trial, we believe the recovery is very good.

6 80. In the proposed FAC, Plaintiffs allege seven class claims (minimum
7 wage, overtime, meal and rest break, Labor Code § 203, Labor Code § 226, Labor
8 Code § 2802, and B&P § 17200) and two PAGA only claims (sick pay and
9 miscellaneous), yet according to Defendants and the evidence Plaintiffs' Counsel
10 examined these claims face substantial obstacles to certification.

11 81. Plaintiffs only alleged the B&P § 17200 class claim to extend the statute
12 of limitations to four years as a protective measure, but because Defendants settled a
13 previously filed wage and hour class action with a settlement period expiring on
14 October 19, 2019, the proposed Class Period only goes back to October 19, 2019 thus
15 reducing this class claim to zero. .

16 82. We are concerned about our ability to prove the two PAGA only claims
17 (sick pay and miscellaneous), which were alleged under information and belief as
18 permitted under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
19 745.

20 83. After investigation and review of the sampling and pertinent written
21 policies, Plaintiffs' Counsel has concluded that a number of the alleged Labor Code
22 violations alleged will be difficult or impossible to prove.

23 84. For example, as to Plaintiff's Labor Code § 226 claim, after reviewing
24 the sampling of pay statements, none of which list "0.00" as the net pay, Plaintiffs'
25 counsel is gravely concerned about the ability to prove class claims for the Labor
26 Code § 226 violation.

27 85. As for Plaintiffs' unpaid wage claim, insofar as it is based on failure to
28 pay for Plaintiff's time waiting for the door to be unlocked in the morning, this

1 represents only a tiny fraction of the hours worked by the class as a whole.

2 86. The same is generally true as to Plaintiffs' Labor Code § 2802 claim for
3 the Named Plaintiff's use of his personal cell phone for work purposes.

4 87. According to the Defendants, the named Plaintiff had no reason to use
5 his personal cell phone because Defendants provided him a two-way radio to
6 communicate for work purposes.

7 88. Defendants contend that two-way radios were available pursuant to an
8 established policy.

9 89. As for Plaintiffs' meal and rest break claims, Defendants provided
10 Plaintiffs' Counsel with governing written policies that Defendants argue are lawful
11 and enforceable.

12 90. While some of the time records appear to show evidence of missing
13 "ins" and "outs" for meal breaks raising the question of whether the employee
14 actually took a meal break, Defendants argue here that its employees indeed received
15 all their meal breaks and that certification will be near impossible due to the nature of
16 the individualized inquiries Plaintiffs would need to conduct to prove that Class
17 Members did not have a meal.

18 91. Moreover, Defendants argue here that certification will be near
19 impossible due to the nature of the individualized inquiries Plaintiffs would need to
20 conduct to prove their class claims

21 92. As to Plaintiff's class claims for violating Labor Code §§ 203 and 226,
22 they are largely discounted due to the sometimes unsurmountable legal requirements
23 that Plaintiffs must prove "willfulness" in connection with their Labor Code § 203
24 claim and "injury" with respect to their Labor Code § 226 claim.

25 93. These are not foregone conclusions.

26 94. Accordingly, Plaintiffs' Counsel substantially discounted the value of
27 these claims.

28 95. Based on the foregoing, Plaintiffs believe the average recovery of more

1 than \$100 per putative Class Member is very good.

2 96. Because the foregoing estimated payments to Settlement Class Members
3 are fair and reasonable, Plaintiffs very respectfully request the Court to approve the
4 Settlement.

5 **Settlement Administration Costs.**

6 97. The parties received a bid for settlement administration work from
7 Phoenix Settlement Administrators (“Phoenix”). A true and correct copy of their bid
8 of is attached hereto and marked as **Exhibit 2**.

9 98. Phoenix is a reputable settlement administrator, and costs of
10 administration will not exceed about \$20,000.

11 99. Because this estimate is reasonable, Plaintiffs very respectfully request
12 this Court to approve the appointment of Phoenix as the Settlement Administrator.

13 **Enhancement Award.**

14 100. Plaintiff Craft played a substantial role in this litigation and has the right
15 to receive an Enhancement Award for his services as the representative of the
16 Settlement Class and for the risks he assumed by serving as the named Plaintiff, such
17 as liability for costs and stigma to his reputation for suing his former employer.

18 101. Defendants do not oppose the requested Enhancement Award.

19 102. While the details of Plaintiff Craft’s services will be briefed more fully
20 when Plaintiffs file their Motion Seeking Attorneys’ Fees and an Enhancement
21 Award for the Plaintiff during the final approval process, putative Class Counsel can
22 attest that Plaintiff Craft spent considerable time assisting counsel in this case;
23 Plaintiff Craft communicated with Class Counsel substantially and was an invaluable
24 participant in this case.

25 103. Plaintiff Craft communicated with Class Counsel substantially and was
26 an invaluable participant in this case.

27 104. Plaintiff Craft risked having to succumb to extensive discovery and to
28 the payment of Defendants’ costs if he lost this case.

1 105. Plaintiff Craft also assumed the risk of a negative opinion by future
2 prospective employers from his suing a former employer.

3 106. Via this settlement, Plaintiff Craft will cause members of the Settlement
4 Class to receive money they otherwise would not have received but for this litigation.

5 107. Because the requested service payments are reasonable, Plaintiffs very
6 respectfully request the Court to approve the Enhancement Award.

7 **Class Counsel's Proposed Fees and Costs.**

8 108. My office will seek, and Defendants do not oppose, an award of fees not
9 to exceed 1/3 of the gross settlement and reasonable costs.

10 109. The requested fees and costs are fair compensation for undertaking
11 complex, risky, expensive, and time-consuming litigation solely on a contingency
12 basis.

13 110. Further, the requests are in line with other attorneys' fees awards in
14 California for wage and hour putative class actions.

15 111. As will be demonstrated in Plaintiffs' Counsel's moving papers, which
16 will be filed concurrently with Plaintiffs' Motion for Final Approval, Plaintiffs'
17 Counsel's requested fees are also consistent with our lodestar.

18 112. Because the requested fees are reasonable, Plaintiffs very respectfully
19 request the Court to approve these fees and costs.

20 **Class Notice.**

21 113. Upon the Court's approval, the Settlement Administrator will send notice
22 to the putative Class Members.

23 114. Attached hereto and marked **Exhibit "A"** of **Exhibit 1** is a true and
24 correct copy of the Notice to Class of Proposed Settlement and Final Approval
25 Hearing.

26 115. In summary, we very respectfully request that this court grant Plaintiffs'
27 Motion for an Order (1) Preliminarily Approving Class Action Settlement; (2)
28 Directing Distribution of Notice of Settlement; and (3) Setting a Hearing for Final

Thomas D. Rutledge
Attorney-at-Law
113 West G Street, Suite 231
San Diego, California 92101
Telephone: (619) 886-7224

1 Approval of Class Action Settlement.

2 Except as to those matter made upon information and belief, I declare under
3 penalty of perjury under the laws of the State of California that the foregoing is true
4 and correct. Executed September 9, 2021, at San Diego, California

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6 By: /s/Thomas D. Rutledge
Declarant, Thomas D. Rutledge
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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, IAN PANCER, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 105 West F St. San Diego, California 92101.

On September 9, 2021, I served the foregoing document(s) described as:

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows: **See Attached List.**

☒ (BY E-MAIL via E-file) I am readily familiar with the business practice for of the Court's third party e-filing vendor, onelegal, for emailing notification of e-service and for providing a download link to recipients of the e-service. This documents identified herein are being sent for download via this third-party vendor pursuant to the vendor's policies and practices.

☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

☐ (BY FACSIMILE) I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed September 9, 2021, at San Diego, California.

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

Ian Pancer
/s/IAN PANCER

SERVICE LIST

John Boggs/David Reese
Fine Boggs & Perkins LLP
80 Stone Pine Road, Suite 210
Half Moon Bay, CA 94019

Attorneys for Defendants

EXHIBIT 1

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (hereinafter the “Agreement”) is made by Plaintiff CHARLES CRAFT (“Employee”), individually and on behalf of all members of the Settlement Class (as defined below) and the group of aggrieved individuals, on the one hand, and Defendants PENSKE AUTOMOTIVE GROUP, INC., and UAG ESCONDIDO M1, INC., (collectively referred to as the “Company”), on the other hand, with as third-party beneficiaries all Released Parties, as defined below in Paragraph II.27. Employee and the Company will, at times, be collectively referred to herein as “the Parties.”

I. THE LITIGATION

1. On January 8, 2021, Employee filed a PAGA complaint in the San Diego County Superior Court entitled Craft v. Penske Automotive Group, Inc., et al. which claim was assigned Case number 37-2021-00000982-CU-OE-CTL. The complaint asserted claims against the Company on behalf of Employee and other current and former employees (aggrieved employees). These claims include (a) failure to pay minimum/regular wages; (b) failure to pay overtime wages; (c) failure to timely pay wages; (d) failure to comply with meal and rest break provisions; (e) failure to provide accurate wage statements; (f) failure to maintain accurate payroll records; (g) failure to reimburse business expenses; and (h) failure to comply with paid sick leave requirements. In addition, the complaint asserted generally additional violations of a broad range of Labor Code provisions, asserting entitlement to civil penalties resulting from each of these allegations under the Labor Code Private Attorney General Act (PAGA), Labor Code §§ 2698 et seq.

2. The Parties engaged in substantial investigation and informal discovery in connection with the Litigation. The Company provided documents and detailed information to counsel for Employee to review and analyze, including sampled payroll and other records on randomly selected employees across several job classifications.

3. The Parties, through counsel, attended a full day of mediation with Jill Sperber, Esquire. The day concluded with a Mediator’s Proposal, which after several days of consideration, both Parties, through counsel, accepted as an appropriate resolution of the litigation.

4. This Agreement concerning the settlement is made in compromise of disputed claims. The payment by the Company required by this Agreement shall satisfy all claims alleged in the Litigation, including but not limited to claims for wages, penalties, and interest, and shall include payment for PAGA penalties, individual settlement awards, attorneys’ fees,

litigation costs and expenses, an enhancement payment for the Class Representative, and all settlement administration costs.

5. Because this is a putative class action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis. In the event the Court does not enter Final Judgment, or in the event such Final Judgment does not become Final for any reason, or is modified in any material respect, or in the event the Effective Date, as defined herein, does not occur, this Agreement shall be deemed null and void ab initio and shall be of no force or effect whatsoever, and shall not be referred to or utilized for any purpose. The Company denies all claims asserted by Employee as to liability and damages as well as class allegations. Indeed, the Company does not waive, but rather expressly reserves all rights to challenge all such claims and allegations upon all substantive and procedural grounds (including, but expressly not limited to, the impropriety of judicial pursuit of any such claims that are inconsistent with the arbitration agreements between the Parties or between the Company and any other allegedly aggrieved employee) including the assertion of any and all defenses, if the Final Judgment does not become Final for any reason, or in the event that the Effective Date does not occur.

II. DEFINITIONS

The following are certain definitions applicable to this Agreement. Definitions contained elsewhere in the body of this Agreement shall also be effective.

1. “Class” – means all nonexempt individuals employed by the Company or any Released Party in California during the relevant time period.
2. “Class Representative Enhancement” – means the sum to be paid to Employee as service for his role as Class Representative, which shall be paid from the Gross Settlement Fund.
3. “Effective Date” – means the date by which both of the following have occurred: (a) this Settlement is finally approved by the Superior Court for the County of San Diego; and (b) the Court’s Order Approving Class Settlement and Dismissing the Class Action with Prejudice (“Final Judgment”) becomes Final.
4. “Final” – means the latest of: (a) if there is an appeal of the Superior Court’s Final Judgment in the Litigation, the date of final affirmance on an appeal or the date of dismissal of such appeal; or (b) if one or more objections are submitted and not withdrawn, the expiration date of the time for filing or noticing any appeal of

the Final Judgment; or (c) if no objections are made, the date the Court enters the Final Judgment.

5. “Final Judgment” – refers to the Final Judgment and Order Approving Class Settlement.
6. “Final Approval Hearing” – means the hearing to be conducted by the Superior Court for the County of San Diego to determine whether to enter the Final Judgment finally approving and implementing the terms of this Agreement.
7. “Gross Settlement Fund” – refers to Five Hundred Seventy-Five Thousand Dollars and No Cents (\$575,000.00), which is the maximum amount the Company shall be required to pay under this Agreement, except as otherwise provided with respect to the employer’s share of payroll taxes, which Defendants shall pay the employer’s share of payroll taxes separate and apart from the Settlement Amount
8. “Litigation” – means, collectively, the action entitled Craft v. Penske Automotive Group, Inc., et al. which claim was assigned Case number 37-2021-00000982-CU-OE-CTL by the San Diego Superior Court, as amended and/or as further amended by agreement of the Parties, together with all causes of action, claims and allegations contained therein.
9. “LWDA” – means the California Labor and Workforce Development Agency.
10. “Motion for Preliminary Approval” – refers to the Motion for Preliminary Approval of the Settlement and its supporting papers.
11. “Net Settlement Fund” – means the Gross Settlement Fund, less all of the following: (a) Class Counsel Attorneys’ Fees; (b) Litigation Costs and Expenses; (c) Class Representative Enhancement; (d) Settlement Administration Expenses; and (e) PAGA Payments to the LWDA and to the aggrieved employees.
12. “Notice” or “Notice Packet” – refers to the Notice of Pendency of Putative Class Action, Proposed Settlement and Hearing Date for Court Approval, and Settlement Allocation Form, which form will be prepared jointly by the Parties and included with the Motion for Preliminary Approval.

13. “Order Granting Preliminary Approval” – refers to the order or statement of decision preliminarily approving the Settlement.
14. “PAGA” – means the California Labor Code Private Attorneys General Act of 2004 as codified at Labor Code §§ 2698, 2699 et seq.
15. “Total PAGA Payment” – means the portion of the Gross Settlement Fund that the Parties have designated as representing the recovery of civil penalties on behalf of the Settlement Class under the Labor Code Private Attorneys General Act of 2004. This amount has been identified as Twenty Thousand Dollars (\$20,000). The Total PAGA Payment is divided into the “PAGA Payment to the LWDA” (75%) and the “PAGA Payment to Aggrieved Employees” (25%).
16. “Parties” – means Employee individually and in his capacity as Class Representative and authorized representative of other aggrieved employees under PAGA, on the one hand; and the Company, on the other hand.
17. “Plaintiff” – means CHARLES CRAFT (“Employee”), individually and in his capacity as Class Representative and authorized representative of other aggrieved employees under PAGA.
18. “Class Counsel” – means, collectively, Ian Pancer, Esquire and Thomas D. Rutledge, Esquire.
19. “Class Counsel Attorneys’ Fees” – refers to the amount awarded to Class Counsel by the Superior Court for the County of San Diego for prosecuting and obtaining a settlement of the Litigation.
20. “Preliminary Approval Hearing” – means the hearing to be conducted by the Superior Court for the County of San Diego to determine whether to grant the Motion for Preliminary Approval.
21. “Settlement” – means the settlement of the Litigation and related claims effectuated by this Agreement.
22. “Settlement Administration Expenses” – means those expenses of effectuating and administering the Settlement, i.e., the costs incurred by the Settlement Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Net Settlement Fund, and the fees of the Settlement Administrator approved by the Court.

23. “Settlement Administrator” – means Phoenix Class Action Administration Solutions, or any other third-party administrator selected by Plaintiff and approved by the Court to effectuate the Settlement.
24. “Settlement Class” and “Settlement Class Members” – means all those persons who are members of the Class and who have not properly and timely opted out of the Litigation.
25. “Settlement Payments” – means the amounts to be paid from the Net Settlement Fund to individual Settlement Class Members.
26. “Settlement Period” – means the period from October 19, 2019, through the date on which the Court grants Preliminary Approval of this Settlement.
27. “Released Parties” – includes each of the following entities, together with their respective past and present officers, directors, shareholders, partners, managers, employees, agents, assigns; parent, subsidiary, and affiliated entities:
- Europa Auto Imports, Inc., dba Mercedes-Benz of San Diego
 - Europa Auto Imports, Inc., dba Penske Automotive Collision Center
 - GMG Motors, Inc., dba BMW of San Diego
 - GMG Motors, Inc., dba MINI of San Diego
 - KMT/UAG, Inc., dba Kearny Mesa Toyota
 - PAG Clovis T1, Inc., dba Toyota of Clovis
 - PAG Management Company, Inc., dba PAG Orange County Management Company
 - PAG Marin M1, Inc., dba Marin Collision Center
 - PAG Marin M1, Inc., dba MINI of Marin
 - PAG Northern California Management, Inc., dba Capitol Expressway Used Car Factory
 - PAG Northern California Management, Inc., dba Northern California Management Company
 - PAG Ontario B1, Inc., dba BMW of Ontario
 - PAG Ontario B1, Inc., dba MINI of Ontario
 - PAG Orange County L1, Inc., dba Lincoln South Coast
 - PAG Orange County RR1, Inc., dba Penske Rapid Repair Orange County
 - PAG Orange County S1, Inc., dba Subaru Orange Coast
 - PAG Santa Ana AVW, Inc., dba Audi South Coast

- PAG Santa Ana AVW, Inc., dba Volkswagen South Coast
- PAG Santa Ana B1, Inc., dba Crevier BMW
- PAG Santa Ana B1, Inc., dba Crevier MINI
- PAG West, LLC, dba PAG West
- Penske Automotive Group, Inc., dba Penske Automotive Group
- Peter Pan Motors, Inc., dba Peter Pan BMW
- Relentless Pursuit Enterprises, Inc., dba Lexus San Diego
- UAG Capitol, Inc., dba Capitol Honda
- UAG Clovis, Inc., dba Honda North
- UAG Escondido A1, Inc., dba Acura of Escondido
- UAG Escondido H1, Inc., dba Honda of Escondido
- UAG Escondido M1, Inc., dba Mazda of Escondido
- UAG Los Gatos, Inc., dba Los Gatos Acura
- UAG Los Gatos, Inc., dba Los Gatos Acura Collision Center
- UAG Marin, Inc., dba Marin Honda
- UAG San Diego A1, Inc., dba Kearny Mesa Acura
- UAG San Diego AU, Inc., dba Audi Escondido
- UAG San Diego Management, Inc., dba Southern California Management Company
- UAG Stevens Creek II, Inc., dba Audi Stevens Creek
- UAG Stevens Creek II, Inc., dba Porsche of Stevens Creek

III. RELEASE OF CLAIMS

1. Scope of Settlement Class Member Release.

a. In exchange for the consideration described through this Settlement, Plaintiff and each member of the Settlement Class (excluding those who elect to exclude themselves from the scope of the class settlement) will fully release and discharge the Company and all Released Parties, including all of their past and present officers, directors, shareholders, partners, managers, employees, agents, and assigns; all parent, subsidiary, and affiliated entities (including all corporations, partnerships, members, divisions and joint ventures) and all past and present officers, directors, shareholders, partners, managers, employees, agents, and assigns of such parent, subsidiary, and affiliated entities (collectively, the “Released Parties”) from the claims within the scope of this Settlement.

b. The Settlement described herein will resolve fully and finally all wage and hour and related claims that were brought or could have

been brought in the Litigation, including, but not limited to, any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, actions or causes of action which are alleged, or reasonably could have been alleged based on the facts and claims asserted in the Litigation, including without limitation to, claims for restitution and other equitable relief; claims for unpaid minimum wages, wages, and overtime wages; failure to provide rest days; failure to provide rest periods or meal periods or to provide compensation in lieu thereof; meal period penalties; rest period penalties; waiting time penalties; penalties for unpaid minimum wages, wages, or overtime wages; penalties for incomplete payroll records and wage statements; failure to reimburse for business expenses; unfair business practices; conversion; failure to provide accurate wage statements; failure to maintain required records; claims for declaratory relief, accounting, or injunctive relief; civil penalties brought under the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698, et seq.), claims for penalties of any nature whatsoever arising out of the Settlement Class Members' Released Claims, or any other benefit claimed on account of allegations and claims which are reasonably related to the allegations and claims asserted in the Litigation, including any amendment to the pleadings therein.

c. The Scope of Settlement and the release of claims herein is intentionally intended by the Parties to be as broad as possible and include "all claims," which is expressly intended by the Parties to "includ[e] 'claims that are not expressly enumerated in the release'" as recognized by the Court of Appeal in Villacres v. ABM Industries, Inc. ((2010) 189 Cal.App.4th 562, 587 [acknowledging broad waiver of potential claims, including PAGA-based claims].) Thus, the Parties intend this release to cover all claims for relief of any kind based on the allegations raised by Plaintiff and all transactions and occurrences upon which those claims were based, including all legal remedies and damages; all injunctive remedies and restitution; all statutory damages and civil penalties under PAGA (including, but expressly not limited to relief demand for alleged violations of Labor Code sections 96, 98.6, 201.5, 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, 212, 213, 221, 222, 222.5, 223, 224, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, 231, 232, 232.5, 233, 234, 351, 353, 403, 404, 432.2, 432.5, 432.7, 435, 450, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 967, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1197, 1198.3, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 16783, 1695, 1695.5, 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5, 2651, 2673, 2673.1, 2695.2, 2800, 2801, 2802, 2806, 2810, 2929, 3073.6, 6310, 6311, 6399.7., as well as alleged violations of IWC Wage Orders), the

California Labor Code, or any other source thereof; and all costs and attorneys' fees related thereto. Moreover, with respect to the PAGA, the scope of the Parties' release includes all claims for civil penalties that have been or could have been brought by the State of California or anyone acting on its behalf under the PAGA; all such claims are extinguished and any further such claims arising out of the same time period shall be barred by collateral estoppel and res judicata.

2. Class Representative Release. In consideration of the Class Representative Enhancement award as described herein, Employee has agreed to the release of all claims (except those that cannot be released as a matter of law, such as workers' compensation claims), whether known or unknown, under federal law or state law against the Released Parties. Employee understands that this release includes unknown claims and that they are, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides: "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."

3. Conditional Agreement to Class Treatment.

a. The Parties expressly note and agree that class certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure or any other standard from this or any jurisdiction, and in fact the named Defendants (and all other Released Parties) take the position that no class action settlement can be maintained either in court or in arbitration absent the limited, revocable waiver herein for the particular named plaintiff for the purposes of this settlement only. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held before entering into the Settlement Agreement.

b. Indeed, the Parties expressly recognize that the Parties' pre-dispute agreements to submit to binding arbitration generally prohibit class-wide or other representative actions and/or relief. However, in the interest of efficiency—and solely for the purpose of and expressly conditioned upon obtaining all required judicial and administrative approvals required to fully implement this Settlement Agreement—Employee and the Company (as well as any affected Released Party) have each elected to agree to a limited waiver on the prohibition against class and other

representative actions. Should final approval not be ordered and/or confirmed by the Superior Court consistent with this Settlement Agreement—or should final approval be ordered on terms that vary from those set forth in this Settlement Agreement—then neither this Settlement Agreement, the limited waiver, nor any of the facts or circumstances related hereto can or should be interpreted as supporting any right by any party or any other putative class member to insist upon class-wide or other representative relief being available under the Parties' arbitration agreements. Moreover, any individual(s) who elects to exclude himself or herself from the Settlement Agreement and the terms thereof (through opt-out or otherwise) will not be able to benefit from any of the terms of the class settlement and shall not have the benefit of the limited waiver on class and/or representative claims including, but expressly not limited to the Parties' waiver of any claims or defenses, including, but expressly not limited to defenses against class-wide and other representative relief in arbitration, statute of limitations defenses, and defenses that would preclude the certification or establishment of any class of aggrieved or similarly situated claimants. The Parties expressly recognize that there has been no finding in this action that class-wide or other representative relief is justified under the facts and circumstances relating to the allegations raised by Plaintiffs in their actions. Indeed, the Company contends there is sharp dispute between the Parties as to whether class-wide or other representative relief would be available or appropriate, both because of the existence of arbitration obligations between the Parties and between all other members of the Settlement Class (including subclasses) and any Released Parties (which agreements do not provide for class-wide or other representative relief), and because the facts and circumstances relating to the allegations raised by Employee do not support class-wide relief under the California Code of Civil Procedure, because of a questions of commonality, typicality, etc. No member of the Settlement Class (including any who choose to exclude himself or herself from the Settlement Class) may rely on this Settlement Agreement or the terms thereof as they may be applied to other members of the Settlement Class as a basis for seeking to bring any existing or future class allegation or other claim.

IV. ALLOCATION OF GROSS SETTLEMENT FUND

The Gross Settlement Fund will be allocated as follows

1. Net Settlement Fund. The Settlement Administrator shall first deduct from the Gross Settlement Fund the amounts approved by the Court for the Attorneys' Fees and Costs awarded to Class Counsel, the Settlement Administration Costs, the PAGA Payment to the LWDA, and the PAGA Payment to the Aggrieved Employees. The remaining amount shall be

known as the “Net Settlement Fund,” which shall be distributed as described below as described in Paragraph VIII.1 of this Stipulation of Settlement.

2. **PAGA Distribution.** Twenty Thousand Dollars and Zero Cents (\$20,000.00) of the Gross Settlement Fund has been set aside by the Parties and designated as civil penalties pursuant to PAGA. Per Labor Code section 2699(i), seventy-five percent (75%) of such penalties, or \$15,000.00, will be the PAGA Payment to the LWDA. The remaining twenty-five percent (25%), or \$5,000.00, will be payable as the “PAGA Payment to Aggrieved Employees,” as described below. (See Paragraph VIII.2.)

3. **Attorneys’ Fees and Costs.**

a. The Parties agree that Class Counsel will jointly request an award of attorneys’ fees as class counsel of up to one-third (1/3rd) of the Gross Settlement Fund, and the Company and Released Parties agree not to contest any request for fees up to that amount. Should the Court approve less than the requested amount, such reduced approval shall not be grounds for revocation or rescission of this Settlement. Class Counsel, all, one, or some, may elect to have the Settlement Administrator, directly or indirectly, disperse all or part of his attorneys’ fees award paid to him/her in periodic payments, through a structured settlement. Class Counsel will bear any and all costs, fees, and expenses of administration for any periodic payments of such award and shall be fully responsible for any taxes, costs, liabilities, attorneys’ fees, and/or penalties resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in connection with any such periodic payments, including without limitation, any such issues, claims, and/or disputes brought by the state or federal government concerning the payment of taxes thereon. Class Counsel shall indemnify, defend, and hold Defendants harmless for any and all taxes, costs, liabilities, attorneys’ fees, and/or penalties resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in connection with any such periodic payments. To the extent the Court approves any award for attorneys’ fees that does not equal 1/3rd of the Total Settlement Amount, Class Counsel retains the right to appeal the Court’s award. Should Class Counsel appeal the Court’s award, the difference between the amount awarded and the amount disputed on appeal shall be retained by the Settlement Administrator pending Class Counsel’s appeal. If Class Counsel’s appeal is unsuccessful, any funds not awarded to Class Counsel in possession of the Settlement Administrator will be added to the Net Settlement Fund for distribution to Settlement Class Members by the Settlement Administrator on a proportional basis relative to the size of their Settlement Shares, in accordance with other administration and distribution requirements hereunder, and Class Counsel shall pay any additional costs incurred by the Settlement Administrator for this purpose. The Parties agree that the Court’s approval of any request for attorneys’ fees

and costs is not a condition of the Settlement Agreement and that an award of less than the amounts requested would not give rise to a basis for Plaintiffs or their counsel to abrogate the Settlement Agreement. Employee acknowledges that he has been advised by this writing of the proposed award of fees associated with this Settlement and hereby consents thereto.

b. Class Counsel may also request reimbursement of up to Fifteen Thousand Dollars and Zero Cents (\$15,000) in actual and/or anticipated costs and other expenses incurred in connection with this action and the achievement of this settlement. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement, including any objections raised, responses to any intervenors and any appeals necessitated by those objections or intervenors. Should the Court approve less than the requested amount, such reduced approval shall not be grounds for revocation or rescission of this Settlement.

c. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when it disburses the fee awards as approved by the Court. Court approval is required for any award of attorneys' fees and costs, and the Parties agree that they will provide information and documentation to support the approval of the requested costs. However, even in the event that the Court reduces or does not approve the requested award of attorneys' fees, Employee shall not have the right to revoke this settlement for that reason, and the settlement will remain binding;

4. Class Representative Enhancement. Up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) shall be allocated from the Gross Settlement Fund in recognition of the contributions of Employee to the achievement of this settlement. Employee participated actively in the preparation and prosecution of this action, and the contributions in time and risk by Employee were instrumental in achieving the settlement result. The Class Representative Enhancement is in addition to the payment to which Employee has the right to receive as a member of the Settlement Class. Court approval is required for any Class Representative Enhancement, and the Parties agree that they will provide information and documentation to support the approval of the requested enhancement. However, even in the event that the Court reduces or does not approve the requested Class Representative Enhancement, Employee shall not have the right to revoke this settlement for that reason, and the settlement will remain binding.

5. Settlement Administration Costs.

a. The Parties have agreed to engage a third-party administrator to administer this Settlement. The Gross Settlement Fund shall be deposited with the Settlement Administrator within thirty (30) calendar days of Final Approval (which, for this purpose, shall be defined as the date on which the Company receives notice of entry of an Order by the Court granting Final Approval) or, solely in the event that there are any objections to the settlement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last date on which any appeal might be filed or (ii) the successful resolution of any appeal(s)—including expiration of any time to seek reconsideration or further review. A separate amount for Employer Taxes will also be deposited with the Settlement Administrator at the same time.

b. All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00), will be drawn from the Gross Settlement Fund.

V. Settlement Administration Procedure

1. Conforming the Pleadings. As a condition of this Settlement, Employee agrees to file an amended complaint, if needed, to conform the pleadings to the discussions of allegations and liabilities between the Parties, as described above in connection with the scope of the claims released (see Part III, *supra*).

2. Motion for Preliminary Approval. Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiffs shall apply to the Court for the entry of an Order:

a. Conditionally certifying the Settlement Classes for purposes of this Settlement Agreement;

b. Appointing Ian Pancer, Esquire and Thomas D. Rutledge, Esquire as Class Counsel;

c. Appointing Charles Craft as the Class Representative;

d. Approving Phoenix Class Action Administration Solutions, as Settlement Administrator;

e. Preliminarily approving this Settlement and its terms as fair, reasonable, and adequate;

f. Approving the form and content of a Notice Packet and directing the mailing of same; and

g. Scheduling a Final Approval hearing.

VI. Notice to Settlement Class

1. Notice Timing and Distribution. Submitted with the motion for preliminary approval will be draft Notice documents intended to provide efficient notice to members of the Settlement Class as follows:

a. Within twenty-one (21) business days after entry of an order preliminarily approving this Agreement, the Company and Released Parties will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, the dates of employment, and the number of Semi-Monthly Pay Periods worked by each Settlement Class member during the Class Period (the “Class Data”). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.

b. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the addresses of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.

c. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. It will be conclusively presumed that, if an envelope so mailed has not been returned within thirty (30) days of the mailing, the Settlement Class member received the Notice Packet. Settlement Class members to whom Notice Packets are

re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or the Company's attorneys to provide notice of the proposed settlement.

2. Options Upon Notice. The Notice to Settlement Class will inform members of the Settlement Class of their options, including the following:

a. Notice of Settlement Award. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award as well as all of the information that was used from records of the Company and/or Released Parties in order to calculate the Settlement Award, including the Settlement Class member's number of Semi-Monthly Pay Periods worked during the relevant Class Period, and the number of Semi-Monthly Pay Periods worked during the same period. Settlement Class members will have the opportunity, should they disagree with these records regarding the information stated in the Notice of Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Award shall be binding upon the Settlement Class member and the Parties.

b. Requests for Exclusion.

(1) Any Settlement Class member who wishes to opt-out of the class settlement must complete and mail a Request for Exclusion to the Settlement Administrator within forty-five (45) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").

(2) The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the class settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the class settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the class settlement, except a Request for Exclusion not containing a Class Member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the class settlement will not have the right to any recovery under the class settlement provisions and will not be bound by the terms of the class settlement or have any right to object, appeal or comment thereon, although the PAGA settlement and release provisions will apply to each such individual without any option for exclusion, and each such individual shall have the right to his or her share of the PAGA Distribution. Any Settlement Class Member who does not submit a Request for Exclusion is automatically deemed a participating Settlement Class Member; there is no requirement that any claim form be submitted.

(3) As noted in reaching this Settlement Agreement, the Parties expressly recognize that the Parties' pre-dispute agreements to submit to binding arbitration generally prohibit class-wide or other representative actions and/or relief. However, in the interest of efficiency—and solely for the purpose of and expressly conditioned upon obtaining all required judicial and administrative approvals required to fully implement this Settlement Agreement—Employee and the Company have each elected to agree to a limited waiver on the prohibition against class and other representative actions. Should final approval not be ordered and/or confirmed by the Superior Court consistent with this Settlement Agreement, then neither this Settlement Agreement, the limited waiver, nor any of the facts or circumstances related hereto can or should be interpreted as supporting any right by either party or any other putative class member to insist upon class-wide or other representative relief being available under the Parties' arbitration agreements. Moreover, any individual(s) who elects to exclude himself or herself from the Settlement Agreement and the terms thereof (through opt-out or otherwise) will not be able to benefit from any of the terms of the class settlement and shall not have the benefit of the limited waiver on class and/or representative claims including, but expressly not

limited to the Parties' waiver of any claims or defenses, including, but expressly not limited to defenses against class-wide and other representative relief in arbitration, statute of limitations defenses, and defenses that would preclude the certification or establishment of any class of aggrieved or similarly situated claimants. The Parties expressly recognize that there has been no finding in this action that class-wide or other representative relief is justified under the facts and circumstances relating to the allegations raised by Employee in the action. Indeed, the Company contends there is sharp dispute between the Parties as to whether class-wide or other representative relief would be available or appropriate, both because of the existence of arbitration obligations between the Parties and between all other members of the Settlement Class (including subclasses) and any Released Parties (which agreements do not provide for class-wide or other representative relief), and because the facts and circumstances relating to the allegations raised by Employee do not support class-wide relief under the California Code of Civil Procedure, because of a questions of commonality, typicality, etc. No member of the Settlement Class (including any who choose to exclude himself or herself from the Settlement Class) may rely on this Settlement Agreement or the terms thereof as they may be applied to other members of the Settlement Class as a basis for seeking to bring any existing or future class allegation or other claim for representative relief against the Company or any party whose release is contemplated by this Settlement Agreement, or as a basis for seeking to certify any class or subclass of individuals with allegations against the Company or any party whose release is contemplated by this Settlement Agreement. Notwithstanding the foregoing, the PAGA settlement and release provisions will apply to all aggrieved individuals whether or not part of the class when approved by the Superior Court pursuant to California law.

(4) If ten percent (10%) or more of the Settlement Class members validly request exclusion from the class settlement, the Company may, at its sole discretion, elect to revoke this Settlement and its stipulation to class certification by communicating that decision to both the Settlement Administrator and Class Counsel, provided however, the Company will be responsible for any costs and fees incurred by the Settlement Administrator. If the class size or number of semi-monthly pay periods between the start of the class period through March 15, 2021 increases by more than 10% from the estimates Defendants provided to Plaintiff to induce this settlement (i.e., approximately 3250 putative Class Members and 74,000 semi-monthly pay periods between October 16, 2019, and March 15, 2021), there will be a pro rata increase to the Settlement Amount for any additional employees or semi-monthly pay periods from the start of the class period through March 15, 2021.

(5) The Parties and their counsel agree not to take any action to initiate any contact with any Settlement Class member to opt out of and/or object to the Settlement. The Parties recognize that a conflict would exist between Class Counsel and any potential member of the Class who elects to opt out, and that Class Counsel cannot represent any such individual.

c. **Objections.** Settlement Class members who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and counsel for the Company, as well as file all such objections with the Court). Counsel for the Company and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Counsel for the Company and Class Counsel shall have ten (10) days to respond. To be valid, any objection must: (1) contain the objecting Settlement Class member's full name and current address; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Class Counsel and Counsel for the Company shall be permitted to submit a written response to any objections within ten (10) calendar days of the Final Approval hearing.

VII. Final Order and Judgment

1. Upon final approval of the Settlement, a Final Order and Judgment shall be entered by the Court which shall, among other things:

a. Grant final approval to the Settlement as fair, reasonable, adequate, in good faith and in the best interests of the Class, as a whole, and order the Parties to carry out the provisions of this Agreement.

b. Award amounts for Class Counsel Attorneys' Fees, Litigation Costs and Expenses, the Class Representative Enhancement, and Settlement Administration Expenses.

c. Adjudge that the Settlement Class Members are conclusively deemed to have released The Company and the Released Parties of and from any and all rights, claims, demands, liabilities, causes of action, liens and judgments arising out of or in any way related to the matters within the scope of the Litigation, consistent with the broad release provisions herein.

d. Bar and permanently enjoin each Settlement Class Member from prosecuting against the Released Parties any and all of the Released Claims which the Settlement Class Members have arising out of, based upon, or otherwise related to the Litigation.

e. Confirm that the Parties' resolution of claims under PAGA meets all required standards and that the release of such claims as set forth in this Settlement precludes the State of California or any other representative thereof (including any other aggrieved employee) from pursuing claims released herein on behalf of itself or any aggrieved employee affected by this Settlement and its release terms.

f. Dismiss this action without prejudice as to all putative class members who are not Settlement Class Members.

g. Dismiss this action with prejudice as to all Settlement Class Members.

2. The Court shall reserve continuing jurisdiction as required to effectuate the provisions set forth herein.

VIII. Distribution of Settlement Proceeds

1. Net Settlement Fund.

a. As noted above, Settlement Class members are not required to submit a claim form to receive a payment from the Settlement.

b. Allocation of the Net Settlement Fund to each Settlement Class Member will be based on each Class Member's pro rata share of the total number of semi-monthly pay periods within the relevant Subclass Settlement Period. For each individual, this share is calculated as the number of semi-monthly pay periods worked by the individual within the Subclass Period for the Company or any Released Party divided by the total number of semi-monthly pay periods worked by all Subclass Members during the same period.

2. PAGA Payment to Aggrieved Employees.

a. \$20,000.00 of the Gross Settlement Fund has been designated as civil penalties under PAGA, of which 25% (\$5,000) shall be distributed to affected aggrieved individuals. Each Settlement Class Member (including those who submit a Request for Exclusion from the class settlement) who was employed by the Company or any Released Party at any time during the period from October 19, 2019, through the date of preliminary approval of this Settlement shall receive a portion of the PAGA Payment to Aggrieved Employees proportionate to the number of Semi-

Monthly Pay Periods that he or she worked during that time period, which shall be calculated by multiplying the PAGA Payment to Aggrieved Employees by a fraction, the numerator of which is each individual's number of Semi-Monthly Pay Periods worked during the PAGA Period, and the denominator of which is the total number of Semi-Monthly Pay Periods worked by all participating Settlement Class members (including those who submit a Request for Exclusion from the class settlement) during the PAGA Period.

3. Distribution Timing and Reporting.

a. Within ten (10) calendar days following deposit by the Company of the Gross Settlement Amount with the Settlement Administrator the Settlement Administrator shall: (i) calculate Settlement Award amounts and provide the same to counsel for review and approval; (ii) upon approval by counsel, prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members; and, (iii) pay the withholdings to the applicable authorities with the necessary reports, submitting copies to counsel for the Company.

b. For purposes of calculating applicable taxes and withholdings, each Class Settlement Award shall be allocated as follows: four-fifths (4/5) as penalties and interest; and one-fifth (1/5) as wages. (The entire PAGA Payment to Aggrieved Employees is considered penalties.) The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Note: The Settlement Administrator will also calculate the amount of employment taxes owed by the Company on the wage portion of the distribution, and the Company will provide the amount of such employment taxes separate and apart from the Gross Settlement Amount; this is the only element of costs or other expenses that is not taken from the Gross Settlement Amount. The Settlement Administrator will handle submission of employer-side employment taxes on behalf of the employer through a suitable power of attorney.

4. Non-Reversionary Settlement.

a. Each member of the Settlement Class who receives a Settlement Award (and all recipients of PAGA Distribution shares) must cash such checks within 180 days from the date of mailing by the Settlement Administrator. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing will be distributed in accordance with California law, including Code of Civil Procedure section 384. Neither Employee nor the Company shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of

checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

If any check issued to a Settlement Class Member is returned as undeliverable, the Settlement Administrator shall make reasonable efforts to locate the Class Member by conducting a National Change of Address Search and re-mail the check. After one hundred eighty calendar days (180) from the date of first issuance, all the checks shall become null and void, and any monies remaining in the distribution account shall be distributed to the Hire Heroes USA (an IRC § 501(c) charitable organization committed to helping returning U.S. service members find rewarding careers nationwide at no cost to veterans) in the names of the Settlement Class Members who did not cash their checks. The Parties agree that this disposition results in no “unpaid residue” under California Code of Civil Procedure section 384, as the entire Net Settlement Fund will be paid out to Settlement Class Members, whether or not they all cash their Settlement Checks. Therefore, the Company will not be required to pay any interest on said amount.

IX. Miscellaneous Terms.

1. No Effect on Other Benefits. The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiffs or Participating Class Members, and Plaintiffs and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.

2. Limitation on Public Statements About Settlement. Employee and Class Counsel represent that they have not and will not issue any press, publications, or other media releases about the Settlement (including, but not necessarily limited to advertising or marketing materials or on social media) or have any communication with the press or media or anyone else regarding the Settlement. However, for the limited purposes of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this action, the gross settlement amount, gross and net settlement award per class member, amount of attorneys’ fees awarded and the venue/case number of this action for such purposes within declarations filed in other litigation. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision does not limit Class Counsel from complying with ethical obligations.

3. No Admission of Liability or Class Certification for Other Purposes. The Company denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims, including disputes regarding whether any party may seek relief for disputes in a judicial forum and/or in a collective action for which no collective action is authorized under dispute resolution agreements requiring arbitration of disputes. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by the Company or any Released Party, or an admission by Employee that any of the claims were non-meritorious or any defense asserted by the Company was meritorious. This Settlement and the fact that Employee and the Company were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement). Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152, and neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Employee or the Company, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Parties in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.

4. Waiver and Amendment. The Parties may not waive, amend, or modify any material provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. Nonmaterial amendments or modifications to this Agreement may be made in writing between Class Counsel and Defendants' Counsel without the need to seek the Court's approval. A waiver or

amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

5. Notices. All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

a. if to Employee and the class:

Ian Pancer, Esq.

105 West F Street, Suite 400
San Diego, CA 92010
(619) 955-6653 tel.

Thomas D. Rutledge, Esq.
113 West G Street, Suite 231
San Diego, CA 92101
(619) 886-7224 tel.

b. If to the Company

David J. Reese
Fine, Boggs & Perkins LLP
111 West Ocean Blvd., Suite 2400
Long Beach, California 90802
(562) 366-0861 tel

6. Stay. All proceedings in this action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement, including moving for preliminary approval and final approval of this Settlement, are hereby stayed.

7. Entire Agreement. This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings before the date hereof relating to the subject matters hereof.

8. Counterparts. This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts, by electronic signature (such as via DocuSign) and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

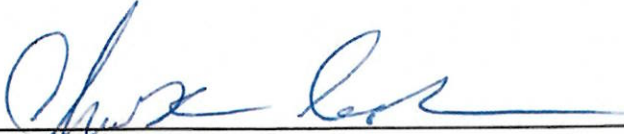
9. Authorization and Cooperation. Class Counsel warrant and represent that they are authorized by Employee, for whom they are the attorneys of record, and the attorneys of record for the Company warrant and represent that they are authorized by the Company, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties agree to seek the assistance of the Mediator, and if agreement remains out of reach, the Court. In all cases, all such documents, supplemental provisions and assistance of the Court shall be consistent with this Agreement.

10. Successors. This Agreement shall be binding upon, and inure to the benefit of, the successors of each of the Parties.

11. California Law. All terms of this Agreement and its Exhibits shall be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

12. Representation by Counsel. The Parties have each been represented by counsel and have cooperated in the drafting and preparation of this Agreement. This Agreement shall not be construed against any party on the basis that the party was the drafter or participated in the drafting.

9/2/21
Date



CHARLES CRAFT
Individually

8-18-21
Date



PENSKE AUTOMOTIVE GROUP, INC.

George Rysik CFO

print name and title

9. Authorization and Cooperation. Class Counsel warrant and represent that they are authorized by Employee, for whom they are the attorneys of record, and the attorneys of record for the Company warrant and represent that they are authorized by the Company, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties agree to seek the assistance of the Mediator, and if agreement remains out of reach, the Court. In all cases, all such documents, supplemental provisions and assistance of the Court shall be consistent with this Agreement.

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Date

CHARLES CRAFT
Individually

8-18-21

Date



PENSKE AUTOMOTIVE GROUP, INC.

George Rousik CFO

print name and title

8-18-21

Date


UAG ESCONDIDO M1, INC.

George Rysik CFO
print name and title

Date

IAN PANCER, Esquire

Attorneys for the Proposed Settlement Class

Date

THOMAS D. RUTLEDGE, Esquire

Attorneys for the Proposed Settlement Class

Date

David Reese
John Boggs
FINE, BOGGS & PERKINS LLP
Attorneys for the Company and the Released
Parties

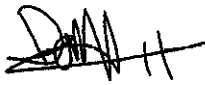
Date

UAG ESCONDIDO MI, INC.

print name and title

9/8/2021

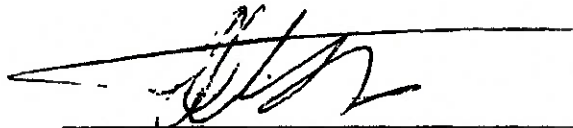
Date


IAN PANCER, Esquire

Attorneys for the Proposed Settlement Class

9-8-21

Date


THOMAS D. RUTLEDGE, Esquire

Attorneys for the Proposed Settlement Class

9/8/21
Date


David Reese
John Boggs
FINE, BOGGS & PERKINS LLP
Attorneys for the Company and the Released
Parties

Exhibit A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CHARLES CRAFT, individually, on
behalf of similarly situated individuals,
and on behalf of all Aggrieved
Employees,

Plaintiff,

vs.

UAG ESCONDIDO M1, INC., and
DOES 1 through 50,

Defendants.

CASE NO. 37-2021-00000982

**NOTICE OF PENDENCY OF
PUTATIVE CLASS ACTION,
PROPOSED SETTLEMENT, AND
HEARING DATE FOR COURT
APPROVAL**

Dept.: C-75

Judge: Hon. Richard Strauss

Complaint Filed:

Trial Date: <<Hearing>>

TO: All individuals who were employed in California by UAG ESCONDIDO M1, INC. or any other dealership within the Penske Automotive family of dealerships as nonexempt employees at any time from October 19, 2019, through the date of <<preliminary approval>>.

Please read this notice carefully. This notice permits you to file a notice of objection on or before <<45 days after notice mailed>> if you wish to object to the proposed settlement, or to submit a request for exclusion on or before <<45 days after notice mailed>> if you wish to be excluded from the proposed settlement. YOU ARE NOT BEING SUED.

Pursuant to the order of the San Diego County Superior Court, entered <<preliminary approval>>, YOU ARE HEREBY NOTIFIED AS FOLLOWS: A proposed settlement has been reached between the parties in the lawsuit identified in the caption above, pending in San Diego County Superior Court, on behalf of the Settlement Class described above, which has been provisionally certified for purposes of this settlement.

You have received this notice because records indicate you qualify as a member of the Settlement Class. This notice is designed to advise you of how you can participate in the settlement, how you can object to the settlement, and how you can exclude yourself from the settlement.

I. BACKGROUND OF THE CASE

On January 8, 2021, Employee filed a PAGA complaint in San Diego County Superior Court, entitled Craft v. Penske Automotive Group, Inc., et al., which claim was assigned Case No. 37-2021-00000982-CU-OE-CTL. The Complaint asserted claims against the Company on behalf of Craft and other current and former employees (aggrieved employees), including (a) failure to pay minimum/regular wages; (b) failure to pay overtime wages; (c) failure to timely pay wages; (d) failure to comply with meal and rest break provisions; (e) failure to provide accurate wage statements; (f) failure to maintain accurate payroll records; (g) failure to reimburse business expenses; and (h) failure to comply with paid sick leave requirements. In addition, the complaint asserted generally additional violations of a broad range of Labor Code provisions, asserting entitlement to civil penalties resulting from each of these allegations under the Labor Code Private Attorney General Act (PAGA), Labor Code section 2698, *et seq.* Following the filing of this suit, Plaintiffs filed a First Amended Complaint alleging class claims for the same above allegations.

Penske and its dealerships (collectively “Penske”) contend that the claims in the litigation are without merit, and dispute all claims for damages, penalties, and other relief. No court has ruled on the merits of the litigation.

The parties engaged in substantial investigation and informal discovery in connection with the litigation. Penske and its dealerships provided documents and detailed information to counsel for Craft to review and analyze, including sampled payroll and other records on randomly selected employees across several job classifications.

Counsel for the employees believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including liability, and the amount of damages or penalties, if any, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, Class Counsel believe that the proposed settlement is fair, reasonable and adequate.

After a full day of mediation with Ms. Jill Sperber, Esq., the Parties agreed to a Mediator’s Proposal that laid out the terms of the settlement described in this Notice. The Class Action Settlement Agreement has been granted preliminary approval by the Court. The Agreement provisionally certifies the Settlement Class for purposes of this settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

Craft and Class Counsel support this settlement. Among the reasons given for support include the risk that class certification could be denied, that each putative class member could be compelled to arbitration on an individual basis, the inherent risk of trial on the merits, and the delays associated with litigation and appeals.

The settlement provides for the following:

A. Gross Settlement Fund: Penske will pay Five Hundred Seventy-Five Thousand Dollars (\$575,000.00) to settle the litigation. This settlement fund shall consist of the following elements: (a) a Net Settlement Fund that will be distributed to the members of the Settlement Class, comprising the majority of the Gross Settlement Fund; (b) Payment to the California Labor and Workforce Development Agency and a related distribution to aggrieved employees; (c) Class Settlement Administration Expenses; (d) Attorneys' Fees and Costs incurred in pursuing the action; and (e) a modest enhancement to reflect the risk and contribution of the Class Representative. Each of these components is described below.

B. Net Settlement Fund: The Net Settlement Fund consists of all funds remaining from the Gross Settlement Fund after subtraction of Plaintiff's Attorneys' Fees, Plaintiff's Litigation Expenses, Class Representative Enhancement, PAGA Payment to the LWDA, and Settlement Administration Expenses. The Net Settlement Fund will be distributed to the Settlement Class as described below.

C. Private Attorneys General Act (PAGA) Allocation: The parties have designated \$20,000.00 of the Gross Settlement Fund as representing the recovery of civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004. Of this amount, 75% (\$15,000.00) will be paid to the California Labor and Workforce Development Agency (LWDA), and the remaining 25% (\$5,000.00) shall be distributed to aggrieved employees, whether or not they elect to exclude themselves from the class settlement as permitted herein.

D. Settlement Administration Expenses: The parties have selected, and the Court has approved, Phoenix Settlement Administrators to administer the settlement. Upon final approval, Class Counsel will request that the Court approve a payment to Phoenix Settlement Administrators to cover its fees and costs associated with giving notice to the Class, administering and disbursing the Net Settlement Fund, and other activities required to administer the settlement. The parties estimate that the payment to Phoenix Settlement Administrators will be no greater than \$35,000, which shall be paid from the Gross Settlement Fund.

E. Plaintiffs' Attorneys' Fees: Class Counsel anticipates requesting an attorneys' fee award equal to one-third (1/3) of the Gross Settlement Fund (\$191,667), subject to court approval, which shall be paid from the Gross Settlement Fund.

F. Plaintiff's Litigation Expenses: Class Counsel anticipates requesting an award of no more than \$15,000.00, subject to court approval, as reimbursement for litigation costs, which shall be paid from the Gross Settlement Fund.

G. Class Representative Enhancement: Craft anticipates requesting an award of no more than \$15,000.00, subject to court approval, for his role as Class Representative, which shall be paid from the Gross Settlement Fund.

III. DISTRIBUTIONS TO CLASS MEMBERS

Upon approval of the Settlement, the Net Settlement Fund will be distributed to class members who do not choose to exclude themselves from the settlement. Under the terms of the Settlement, the Net Settlement Fund will be distributed to Settlement Class Members based on each Class Member's *pro rata* share of the total number of semi-monthly pay periods worked within the Class Period. This share is calculated as the number of semi-monthly pay periods worked by each individual within the Class Period divided by the total number of semi-monthly pay periods worked by Class Members during the same period.

Settlement Payments are payments for all claims in the Litigation or that reasonably could have been asserted based on the causes of action, claims and allegations in the Litigation. Of the payments to individual Settlement Class Members, one-fifth (20%) shall be designated as wages subject to payroll withholding to be reported on IRS Form W-2s where required by law, and four-fifths (80%) shall be designated as penalties and interest to be reported on IRS Form 1099s where required by law. Penske shall be responsible for paying the employer's share of payroll taxes on any amounts allocated as wages. Each Settlement Class Member shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of his or her Settlement Payment or Class Representative Enhancement. The Settlement Administrator shall report all required information to the appropriate taxing authorities regarding all payments made pursuant to this Agreement.

In addition to the Net Settlement Fund distribution, each affected Class Member who worked between October 19, 2019, and the date of preliminary approval of the Settlement Agreement (the "PAGA Period") will be entitled to a *pro rata* share of the \$5,000 PAGA distribution. Each affected individual's share is calculated as the number of semi-monthly pay periods worked by each individual within the PAGA Period divided by the total number of semi-monthly pay periods worked by all class members during the same period.

IV. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

Your interests as a Settlement Class Member are represented by Craft and Class Counsel. Unless you exclude yourself from the Settlement Class, you are a part of the Settlement Class, you will be bound by the terms of the settlement agreement and any final judgment that may be entered by the Court, and you will be deemed to have released certain claims as described below. As a member of the Settlement Class you will not be responsible for the payment of attorneys' fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and costs.

A. Participating in the Settlement

If you qualify for inclusion in the Settlement Class and you wish to participate in the settlement, **you are NOT required to take any action**. If the Court grants final approval to the settlement and you qualify as a Settlement Class Member, you will

receive a Settlement Payment based on the calculations described above. You will also be bound by the terms of the settlement and will release Penske and all related or affiliated entities from any and all wage related claims that you may have based on the allegations in the lawsuit.

B. Objecting to the Settlement

If you do not agree with the terms of the Settlement, you can object to the settlement before final approval. However, if the Court rejects your objection you will still be bound by the terms of the settlement. To object, you must submit a written objection and a notice of intention to appear at the Final Approval Hearing by <<45 days after notice mailing>> to the Class Settlement Administrator at the following address:

[Settlement Administrator name and address].

Any written objections must state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, telephone number, and the dates of your employment as a qualified member of the Settlement Class defined above. To be valid and effective, any objection to approval of the settlement must be postmarked and mailed to the Class Settlement Administrator no later than <<45 days after notice mailed>>. **PLEASE DO NOT TELEPHONE THE COURT.**

C. Excluding Yourself from the Settlement

If you qualify for inclusion in the Class but you do not wish to participate in the class settlement, you may exclude yourself (*i.e.*, “opt-out”) by submitting a letter requesting exclusion to the Class Settlement Administrator. Your letter must be signed by you personally, and must clearly state: (1) your name, address, telephone number, the last four digits of your social security number, and the dates of your employment; and (2) your wish to be excluded from the Settlement Class. **Your letter requesting exclusion must be postmarked and mailed on or before <<45 days after notice mailed>> and mailed to the Class Settlement Administrator at the following address:**

<<Name, Address and Telephone Number of Settlement Administrator>>

Any person who timely submits a letter following the procedures above to request exclusion from the Class shall, upon receipt, no longer be a member of the Settlement Class, shall be barred from participating in any portion of the class settlement, may not object to the class settlement, and shall receive no payment or benefits from the class settlement. Any such person will not release any individual claims he or she may have against Penske. However, self-exclusion from the class portion of the settlement has no effect upon the settlement of claims under PAGA on behalf of aggrieved individuals. Thus, even those who elect to exclude themselves from the settlement will receive their portion of the distribution of PAGA penalties to aggrieved employees.

If you exclude yourself from the Class Settlement, you will NOT receive any money from the Class Settlement but you will receive your share of the PAGA distribution to aggrieved employees, provided you worked during the PAGA Period.

D. Challenging the Record of Your Pay Periods Worked

The Settlement Allocation form that accompanies this notice states Penske's record of your pay periods worked within the Settlement Period. If you believe this information as stated on the Settlement Allocation Form to be inaccurate, you may state what you believe the correct number to be, and provide supporting documentation. The Settlement Administrator will then decide whether this information should be revised. **Your written dispute must be postmarked and mailed on or before <<45 days after notice mailed>> and mailed to the Class Settlement Administrator at the following address:**

<<Name, Address and Telephone Number of Settlement Administrator>>

You may also provide corrected name, address, and/or telephone information on the Settlement Allocation Form.

IV. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

Upon the Court's final approval of the class settlement and entry of final judgment, each class member shall be deemed to have released Penske, and all of its parents, subsidiaries, predecessors, successors, and affiliates, and all of their respective shareholders, officers, directors, employees, administrators, fiduciaries, trustees, agents, attorneys, and benefit plans (collectively the "Released Parties") from any and all "Settlement Class Members' Released Claims." For the purposes of this Agreement, the Settlement Class Members' Released Claims are defined as:

all claims for relief of any kind based on the allegations raised by Plaintiff and all transactions and occurrences upon which those claims were based, including all legal remedies and damages; all injunctive remedies and restitution; all statutory damages and civil penalties under PAGA (including, but expressly not limited to relief demand for alleged violations of Labor Code sections 96, 98.6, 201.5, 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, 212, 213, 221, 222, 222.5, 223, 224, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, 231, 232, 232.5, 233, 234, 351, 353, 403, 404, 432.2, 432.5, 432.7, 435, 450, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 967, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1197, 1198.3, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 16783, 1695, 1695.5, 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5, 2651, 2673, 2673.1, 2695.2, 2800, 2801, 2802, 2806, 2810, 2929, 3073.6, 6310, 6311, 6399.7., as well as alleged violations of IWC Wage Orders), the California Labor Code, or any other source thereof; and all costs and attorneys' fees related thereto. Moreover, with respect to the PAGA, the scope of the Parties' release includes all

claims for civil penalties that have been or could have been brought by the State of California or anyone acting on its behalf under the PAGA; all such claims are extinguished and any further such claims arising out of the same time period shall be barred by collateral estoppel and res judicata.

The Scope of Settlement and the release of claims herein is intentionally intended by the Parties to be as broad as possible and include “all claims,” which is expressly intended by the Parties to “includ[e] ‘claims that are not expressly enumerated in the release’” as recognized by the Court of Appeal in Villacres v. ABM Industries, Inc. ((2010) 189 Cal.App.4th 562, 587 [acknowledging broad waiver of potential claims, including PAGA-based claims].) Thus, the Parties intend this release to cover all claims for relief of any kind based on the allegations raised by Plaintiffs and all transactions and occurrences upon which those claims were based, including all legal remedies and damages; all injunctive remedies and restitution; all statutory damages and civil penalties under PAGA (including, but expressly not limited to relief demand for alleged violations of Labor Code sections 201, 202, 203, 204, 210, 226(a), 226(e), 226.3 510, 512, 516, 1194, 1197, 1198, and 2802, and alleged violations of IWC Wage Orders), the California Labor Code, or any other source thereof; and all costs and attorneys’ fees related thereto. Moreover, with respect to PAGA, the scope of the Parties’ release includes all claims for civil penalties that have been or could have been brought by the State of California or anyone acting on its behalf under PAGA; all such claims are extinguished and any further such claims arising out of the same time period shall be barred by collateral estoppel and res judicata.

B. Payment to Settlement Class Members

The distribution of the Settlement Fund will begin approximately twenty (20) days after final court approval of this Settlement, and all appeals and rights to appeal are exhausted.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department C-75 of the San Diego County Superior Court, 330 W. Broadway, San Diego, California, 92101 on _____, 2022, at _____m., to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel’s request for Plaintiff’s Attorneys’ Fees, Plaintiff’s Litigation Expenses, and the Class Representative Enhancement to be paid to the Class Representative. Class Counsel’s application for attorneys’ fees and reimbursement of expenses will be on file with the Court no later than ten (10) days before this hearing, and will be available for review after that date.

The hearing may be continued without further notice to the settlement class. It is not necessary for you to appear at this hearing. (However, you are permitted to appear if you have timely filed an objection and notice of intent to appear.)

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. Should you desire additional information, you may contact Class Counsel as follows:

Ian Pancer, Esq
The Law Office of Ian Pancer
105 West F Street, Suite 400
San Diego, California 92101
Phone: (619) 955-6653
ian@sandiegolegal.net

Thomas D. Rutledge, Esq.
113 West G Street, Suite 231
San Diego, California 92101
Telephone: (619) 886-7224
thomasrutledgelaw@gmail.com

If you wish to review the precise terms and conditions of the settlement, you are referred to the detailed Class Action Settlement Agreement, which is on file with the Clerk of the Superior Court. The pleadings and other records in this litigation including the Class Action Settlement Agreement, may be examined at any time during regular business hours at the Office of the Clerk of the San Diego County Superior Court, 330 W. Broadway, San Diego, California, 92101.

Settlement Award checks should be cashed promptly upon receipt. Proceeds of checks which remain uncashed after 180 days from the date of issuance will be distributed to the Hire Heroes USA, in the names of the Settlement Class Members who did not cash their checks. If you lose or misplace a check, you should contact the Settlement Administrator immediately to request a replacement.

This notice is available in Spanish upon request by contacting Phoenix Settlement Administrators at 888-613-5553 or 800-784-2174 or by email to info@phoenixclassaction.com.

DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

BY ORDER OF THE SUPERIOR COURT OF CALIFORNIA

EXHIBIT 2



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Class Members	3,220
Opt Out Rate	1%
Opt Outs Received	32
Total Class Claimants	3,188
Subtotal Admin Only	\$21,271.83

Not-to-Exceed Total \$20,000.00

For 3,220 Class Members

Pricing Good for Scope of Estimate Only

July 14, 2021

Case: Craft v. Penske Automotive Group (CA), Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Roman Zhuk
Firm: Penske Legal Counsel
Contact Number: (415) 423-4407
Email: rzhuk@penskeautomotive.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **3,220** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	4	\$400.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Setup*	\$150.00	1	\$150.00
Call Center & Long Distance	\$2.00	431	\$862.00
NCOA (USPS)	\$825.00	1	\$825.00
Total			\$2,437.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Website / Reporting

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Data Merge & Duplication Scrub	\$0.10	3,220	\$322.00
Notice Packet & Opt-Out Form	\$1.00	3,220	\$3,220.00
Estimated Postage (up to 2 oz.)*	\$0.47	3,220	\$1,513.40
Static Website	\$100.00	1	Included
Check Cashing Reminder Postcard	\$0.60	669	TBD
Postage Included			
Total			\$5,255.40

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	6		\$330.00
Skip Tracing Undeliverables	\$0.85	506		\$430.10
Remail Notice Packets	\$0.75	503		\$377.25
Estimated Postage	\$0.50	503		\$251.50
Programming Undeliverables	\$50.00	1		\$50.00
			Total	\$1,438.85

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	7		\$385.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	38		\$380.00
Case Manager	\$85.00	6		\$510.00
			Total	\$1,775.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	4		\$540.00
Disbursement Review	\$135.00	3		\$405.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	2		\$270.00
Check Run Setup & Printing	\$135.00	8		\$1,080.00
Mail Class Checks *	\$0.70	3,188		\$2,231.60
Estimated Postage	\$0.51	3,188		\$1,625.88
			Total	\$6,247.48

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	5		\$575.00
Remail Undeliverable Checks (Postage Included)	\$1.35	306		\$413.10
Case Associate	\$55.00	5		\$275.00
Reconcile Uncashed Checks	\$85.00	5		\$425.00
Conclusion Reports	\$115.00	4		\$460.00
Case Manager Conclusion	\$85.00	6		\$510.00
Final Reporting & Declarations	\$115.00	4		\$460.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,000.00	1		\$1,000.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Contolers Office Estimated <u>19</u> Total Class Members	\$1,000.00	1		TBD
Total				\$4,118.10

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$21,271.83



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.