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17 *Attorney for Defendants, STEVEN J. SAPORITO*
18 *and HILLTOP AUTOMOTIVE*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MICHAEL P. SCHULTZ, an individual;

Plaintiff,

vs.

STEVEN J. SAPORITO, individually & doing
business as HILLTOP AUTOMOTIVE; and
DOES 1 through 100, inclusive;

Defendants.

Case Number: 21STCV06537

[Honorable Maureen Duffy-Lewis; Department 38]

**STIPULATION BY ALL PARTIES FOR
ORDER APPROVING SETTLEMENT
PURSUANT TO CALIFORNIA LABOR
CODE PRIVATE ATTORNEYS' GENERAL
ACT AND ENTERING JUDGMENT**

Complaint Filed: February 18, 2021
Trial Date: May 30, 2023

Plaintiff MICHAEL P. SCHULTZ ("Plaintiff") and Defendants STEVEN J. SAPORITO and HILLTOP AUTOMOTIVE ("Defendants") (collectively, "the Parties"), by and through their respective counsel of record, hereby stipulate as follows:

WHEREAS, on or about January 21, 2021, Plaintiff ("Schultz"), by and through Plaintiff's

1 counsel, sent a notice to the California Labor Workforce Development Agency (“LWDA”) and
2 Defendants (the “PAGA Notice”) alleging that Defendants engaged in violations of the California
3 Labor Code and California Wage Orders, seeking civil penalties pursuant to the California Labor Code
4 Private Attorneys’ General Act (“PAGA”);

5 **WHEREAS**, on or about February 18, 2021, Plaintiff filed a Complaint in the California
6 Superior Court for the County of Los Angeles entitled Michael P. Schultz vs Steven J. Saporito., et al.,
7 case number_21STCV06537 (the “Action”), alleging individual employment claims and a PAGA
8 claim asserting that Defendants: (1) failed to provide prompt payment of wages to employees upon
9 termination and resignation in violation of Labor Code §§ 201, 202, 203; (2) failed to provide itemized
10 wage statements to employees in violation of Labor Code §§ 226(a), 1174, 1174.5; (3) failure to
11 provide meal and rest periods in violation of applicable Wage Orders and Labor Code §§ 226.7; (4)
12 failure to keep required payroll records in violation of applicable Wage Orders and Labor Code §§
13 1174 and 1174.5; (5) failure to pay overtime wages in violation of applicable Wage Orders and Labor
14 Code §§ 510, 558, 1194 and 1198; (6) failed to provide the unpaid balance of the full amount of
15 overtime compensation in violation of Labor Code §§ 1194, 2698 *et seq.*; (7) failure to pay minimum
16 wage in violation of applicable Wage Orders and Labor Code §§ 1182.12, 1194, and 1197; (8)
17 Violation of Labor Code section 1199 (a) and (c) and 2699.5 *et seq.*; (9) failure to provide itemized
18 wage statements to employees in violation of Labor Code section 226(a); (10) Failure to indemnify
19 and/or reimburse expenses, in violation of Cal. Lab. Code § 2802; (11) Violations of California Labor
20 Code sections 201; 202; 203; 204; 206; 216; 218.6; 221; 226 *et seq.*; 226.8; 432.5; 450; 226.7; 512;
21 1174; 1174.5; 2802; applicable IWC Wage Orders, and others (the “PAGA Representative Claim”);

22 **WHEREAS**, on or about April 19, 2021, Plaintiff, by and through Plaintiff’s counsel,
23 amended the Complaint.

24 **WHEREAS**, a Settlement was entered into on March 28, 2022, by and between Plaintiff, on
25 behalf of himself and “Aggrieved Employees” (described below), on the one hand, and Defendants
26 (collectively “Hilltop”), on the other hand, to memorialize the essential terms of the settlement of
27 Plaintiff’s PAGA Representative Claim;

28 **WHEREAS**, Defendants vigorously dispute and deny the allegations and various causes of

1 action asserted in the Action, including specifically the PAGA Representative Claim, and deny that
2 they committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable
3 conduct of any kind;

4 **WHEREAS**, the Parties agree to fully cooperate to obtain approval of the settlement, pursuant
5 to the terms set forth herein. The Parties also pledge their good faith effort and fair dealing in providing
6 assistance and assent to a final Joint Stipulation for Settlement (or similar long-form Settlement
7 Agreement), and in effectuating the terms of the settlement of Schultz’s representative claims asserted
8 in the Settlement.

9 **WHEREAS**, for purposes of Plaintiff’s PAGA Representative Claim, and for purposes of the
10 Action and this PAGA Settlement Agreement, the allegedly aggrieved individuals (“Aggrieved
11 Employees/PAGA Settlement Members”) are defined by Plaintiff to be all current and former non-
12 exempt employees in California who worked at least one pay period for Defendants during the “PAGA
13 Period.” The PAGA Period is defined to be from June 21, 2019 through the date the Court enters the
14 order granting approval of the PAGA settlement.

15 **WHEREAS**, Defendants represents that there were 3 allegedly aggrieved individuals;

16 **WHEREAS**, based on their own independent investigations and evaluations, the Parties and
17 their respective counsel are of the opinion that the settlement of the PAGA Representative Claim on
18 the terms set forth in the PAGA Settlement Agreement is fair, reasonable and adequate and is in the
19 best interests of the Parties, the LWDA, and Aggrieved Employees in light of all known facts and
20 circumstances and the risks inherent in litigation;

21 **WHEREAS**, California Labor Code Section 2699(l)(2) requires that this Court review and
22 approve any settlement pursuant to PAGA;

23 **WHEREAS**, in consideration of the terms and conditions set forth in the PAGA Settlement
24 Agreement, the Parties agree to be bound to the terms and conditions set forth in the PAGA Settlement
25 Agreement, including that:

26 Hilltop will pay the PAGA Settlement Sum upon expiration of the appeal period after the final
27 Court approval of the Settlement. Defendants shall pay the total sum of Forty Thousand Dollars
28 (\$40,000.00) (the “PAGA Settlement Sum”), out of which the total sum of Three Thousand Dollars

1 (\$3,000.00) (the “PAGA Gross Settlement Sum”) on account of disputed and alleged civil penalties
2 as follows:

3 A. One-third (1/3) of the PAGA Gross Settlement Sum, \$1,000.00, plus \$75 for
4 costs, totaling \$1,075.00, shall be paid to Plaintiff’s counsel Sirmabekian Law Firm PC, for attorney’s
5 fees and costs incurred on the PAGA claims;

6 B. The remaining balance after deducting the amount being paid to Plaintiff’s
7 counsel for attorney’s fees, costs and expenses on the PAGA claims, \$1,925.00 (the “PAGA Net
8 Settlement Amount” or “PNSA”), shall be classified for tax purposes as civil penalties (“Civil Penalty
9 Allocation”), unless otherwise required by law, and shall be distributed as follows:

10 i. Seventy-Five Percent (75%) of the Civil Penalty Allocation, \$1,443.75,
11 shall be paid to the LWDA, which represents civil penalties payable to the LWDA under the PAGA,
12 Labor Code section 2698, *et seq.*;

13 ii. Twenty Five Percent (25%) of the Civil Penalty Allocation, \$481.25,
14 (the “Aggrieved Employee Amount”) shall be paid to the PAGA Members, pursuant to Labor Code §
15 2699(i), divided amongst PAGA Members based on each PAGA Member’s respective number of pay
16 periods worked for Defendants in California during the PAGA Period.

17 Schultz agrees that counsel for Schultz will notify the LWDA of the settlement at the same
18 time the settlement is submitted to the Court for approval, seek approval of the settlement, and perform
19 any and all statutory tasks as required by law. The Parties agree that there is no right for any Aggrieved
20 Employee to opt out or otherwise exclude himself or herself from the PAGA Settlement.

21 The Parties further agree that should the Court deny approval of the settlement based on the
22 allocation of the PGSA or PNSA, the Parties agree to re-negotiate in good faith in an effort to obtain
23 approval of the settlement.

24 **WHEREAS**, the Parties upon Court approval of the Settlement and performance of the
25 payment obligations therein, Schultz and PAGA Members will fully and finally release and discharge
26 Hilltop and its former, present and future owners, parents, and subsidiaries, and all of their current,
27 former and future spouse(s), children, officers, directors, members, managers, employees, consultants,
28 partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal

1 representatives (“Released Parties”), to the full extent permitted by law, of and from the Action and
2 from any and all claims asserted in the Complaint for civil penalties under PAGA, as well as any
3 interest, fees, and costs available under PAGA based on the factual allegations in the Complaint and
4 in Shultz’s January 22, 2021 LWDA letter, and all PAGA claims that could have been alleged based
5 on the factual allegations contained collectively therein, including, but not limited to (a) failure to pay
6 all overtime wages; (b) failure to pay all minimum wages; (c) failure to pay wages, (d) failure to pay
7 for all work, including offthe-clock work (e) failure to provide proper meal periods; (d) failure to
8 authorize and permit rest periods; (e) failure to furnish accurate wage statements; (f) failure to
9 reimburse employees for business expenses; (g) misclassification of employees as independent
10 contractors, (h) failure to timely pay final wages; and (i) for alleged violations of California Labor
11 Code §§ 201, 202, 203, 204, 206.5, 210, 221, 223, 224, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174,
12 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802 following claims: (“Released
13 Claims”);

14 **WHEREAS**, Hilltop shall pay \$37,000.00 to Schultz in exchange for a general release as to
15 Released Parties of all claims, causes of action, and matters that are based on, arise from, pertain and
16 relate to, result from and could have been alleged based on the facts, claims and allegations pertaining
17 and related to and forming the basis of the Action, including a Section 1542 release and waiver of all
18 claims known and unknown, without exception, except as may be prohibited by law.

19 **WHEREAS**, Hilltop represents that it has employed 3 persons from the beginning of the
20 PAGA Period through present. If as of the date of court approval, the number of Class Members
21 exceeds 3 by more than 2 employees, then the amount of the Gross Settlement Amount shall increase
22 in proportion to the increased percentage. For example, if such increase in Class Members during the
23 Class Period is 100% over 3 class members, the Gross Settlement Fund will increase by 100%.

24 Hilltop will provide with a list of all PAGA Settlement Members (the “PAGA Settlement
25 Member List”) within ten (10) days of the court signing the approval order. The PAGA Settlement
26 Member List shall state each listed employee’s full name, last known mailing address, social security
27 number, and beginning and end dates of employment. This information shall be treated as and remain
28 confidential and shall be used solely to manage the notice and payment process described in this

1 Settlement.

2 Hilltop Automotive shall be the Settlement Administrator and will provide a
3 declaration confirming that funds have been distributed per this Settlement or as the Court may require.
4 Payments to PAGA members, the LWDA, Plaintiff, and Plaintiff's Counsel shall be made by the
5 Settlement Administrator within 20 days of the Court signing the approval order. All checks to
6 Aggrieved Employees will be sent by the Settlement Administrator to each Aggrieved Employees'
7 last known address on file with Defendants and shall remain valid and negotiable for 180 days from
8 the date of their issuance to Aggrieved Employees. If any checks are returned as undeliverable, Hilltop
9 Automotive, as Settlement Administrator, shall make reasonable efforts to obtain an updated address
10 and reissue a check to that Aggrieved Employee. All funds not claimed within 180 days of the initial
11 mailing shall be directed to the State Controller's Office under the Unclaimed Property Statutes in the
12 name(s) of the individual(s) who did not cash his or her check(s).

13 **WHEREAS**, the Parties agree that discovery is stayed in the Action while the Parties work
14 toward settlement and court approval of the settlement. The Parties shall submit stipulations of
15 settlement within 30 days of execution of a full and complete settlement agreement, which fully
16 executed settlement agreement should occur within 45 days of the settlement.

17 **WHEREAS**, the Parties agree that this PAGA Settlement is not evidence that the operative
18 complaint filed in the Action by Plaintiff has any merit, nor does it constitute an admission of any
19 wrongdoing by Hilltop. Hilltop does not admit to liability or to the suitability of this case for
20 representative litigation other than for purposes of settlement. This PAGA Settlement will not be
21 deemed admissible in any other proceeding or in this proceeding other than to effectuate this
22 settlement. If the Court does not grant approval of this settlement, then the Parties revert to their
23 previous positions and Hilltop will contend that a representative action is not appropriate.

24 **WHEREAS**, the Parties to this PAGA Settlement are represented by competent counsel, and
25 they have had an opportunity to consult with counsel. The Parties to this PAGA Settlement agree that
26 it reflects their good faith compromise of the claims raised in the Settlement, based upon their
27 assessment of the mutual risks and costs of further litigation and the assessments of their respective
28 counsel.

1 **WHEREAS**, the Parties agree that this PAGA Settlement is confidential (except for purposes
2 of enforcement) and that no Party will issue any press release nor other public or non-public
3 representation regarding the settlement other than as necessary to obtain Court approval and effectuate
4 the terms of the settlement. The Parties and their counsel agree that they will not initiate or have any
5 contact with the press, respond to any press inquiry, or have any communication with the press about
6 this case. Any breach of the confidentiality provision will result in a payment of liquidated damages
7 in the amount of 2% of the settlement payment by the breaching party.

8 **WHEREAS**, the Parties intend that this PAGA Settlement shall be fully enforceable and
9 binding upon all Parties, and that it shall be admissible and subject to disclosure in any proceeding to
10 enforce its terms under Code of Civil Procedure section 664.6 and any other applicable statute or law,
11 notwithstanding the mediation confidentiality provisions that otherwise might apply under local,
12 federal and state law.

13 **WHEREAS**, the Parties agree that the subsequent filing of a Joint Stipulation of Settlement
14 (or similar Settlement Agreement) is for settlement purposes only and if, for any reason, the settlement
15 is not approved, the Joint Stipulation of Settlement and this PAGA Settlement will be of no force or
16 effect.

17 **WHEREAS**, the Parties to this PAGA Settlement agree that the long-form Settlement
18 Agreement will contain an integration clause.

19 **WHEREAS**, the Parties shall not make any disparaging or critical statement about, relating or
20 pertaining to, or otherwise involving each other.

21 This Settlement may be signed in counterparts and each has the same force and effect as the
22 original.

23 If a prospective employer of Schultz contacts Hilltop for a reference, Hilltop will provide a
24 neutral reference consisting solely of dates of employment and positions held. Schultz should direct
25 all prospective employer reference requests, in writing, to Steve Saporito at Hilltop. Mr. Saporito's
26 contact information is:

27 *To Plaintiff:*

28 Sarkis Sirmabekian, Esq. [SBN 278588]

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To Defendants:

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Email: Joel.Kelly@jacksonlewis.com

Eve.Tilley-Coulson@jacksonlewis.com

WHEREAS, this Settlement may be signed in counterparts and each has the same force and effect as the original.

NOW THEREFORE, the Parties jointly request that the Court approve the PAGA Settlement set forth in the PAGA Settlement Agreement and enter judgment according to its terms.

DATED: April 27, 2022

SIRMABEKIAN LAW FIRM, PC

By:



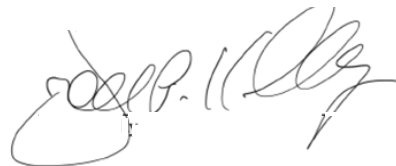
Sarkis Sirmabekian, Esq.

Attorney for Plaintiff

DATED: April 27, 2022

JACKSON LEWIS P.C

By:



Joel P. Kelly, Esq.

Attorney for Defendants

1 **PROOF OF SERVICE**

2 (§ 1013a, 2015.5 C.C.P.)

3 **STATE OF CALIFORNIA**)
4 **COUNTY OF LOS ANGELES**) ss.

5 I am a citizen of the United States of America; I am over the age of eighteen years and not a
6 party to the within entitled action; my business address is: 3435 Wilshire Boulevard, Suite
7 1710, Los Angeles, California 90010.

8 On the below-indicated date, I served the following document:

9 **STIPULATION BY ALL PARTIES FOR ORDER APPROVING SETTLEMENT PURSUANT**
10 **TO CALIFORNIA LABOR CODE PRIVATE ATTORNEYS' GENERAL ACT AND**
11 **ENTERING JUDGMENT**

12 on the interested parties in said action by placing:

13 X a true and correct copy,

14 and addressed as set forth on the attached Service List and delivered by one or more of the
15 means set forth below:

16 ☒ **BY ELECTRONIC SERVICE IN LIEU OF SERVICE BY MAIL, EXPRESS MAIL,**
17 **OVERNIGHT DELIVERY, OR FACSIMILE TRANSMISSION:** In accordance with
18 California Code of Civil Procedure section 1010.6, I caused the document to be sent to the
19 person(s) below at the e-mail address(es) listed below.

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

22 EXECUTED: May 10, 2022
23 At Los Angeles, California

24 Grigor Gregg Sirmabekian
25 Grigor Gregg Sirmabekian

26
27 [SERVICE LIST ON THE FOLLOWING PAGE]
28

SERVICE LIST

Joel P. Kelly, Esq. [SBN 100716] Eve Tilley-Coulson, Esq. [SBN 320886] JACKSON LEWIS P.C. 725 S Figueroa Street, Suite 2500 Los Angeles, California 90017-5408 Email: <i>Eve.Tilley-Coulson@jacksonlewis.com</i>	<i>Attorney for Defendants, STEVEN J. SAPORITO and HILLTOP AUTOMOTIVE</i>
Labor and Workforce Development Agency ("LWDA") Department of Industrial Relations Attn. PAGA Administrator 1515 Clay Street, Suite 801 Oakland, CA 94612	<i>Labor and Workforce Development Agency</i> <i>("LWDA") filed/ served online at:</i> https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html