

**PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
AGREEMENT AND LIMITED RELEASE**

This Private Attorneys General Act Settlement Agreement and Release ("Agreement") is made by and between ERIC CHONG ("Plaintiff"), on behalf of himself and as a proxy/agent for the California Labor Workforce Development Agency ("LWDA"), and TEAM VOLKSWAGEN OF HAYWARD CORPORATION ("Defendant"). Plaintiff and Defendant are collectively referred to herein as the "Parties" and each may be individually referred to as a "Party."

WHEREAS, Plaintiff filed on March 26, 2021, the action currently pending in the Superior Court of California, County of Alameda, entitled Chong v. Team Volkswagen of Hayward Corporation, et al., Case No. RG21093235;

WHEREAS, certain disputes have arisen between the Parties concerning Defendant's wage statements, payment of wages, maintenance of work records and related employment practices, as applied to non-exempt employees employed by Defendant in California between March 8, 2020, and May 31, 2022 (the "PAGA Period"). These employees are hereinafter referred to as the "PAGA Employees."

WHEREAS, the Parties believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the PAGA Representative Claim, and have arrived at the settlement after extensive, arms-length negotiations in a full day private mediation, taking into account all relevant factors, present and potential ("Settlement").

WHEREAS, California Labor Code section 2699(l) requires Court approval of "any penalties sought as part of a proposed settlement agreement" pursuant to PAGA.

NOW THEREFORE, in consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

1. EFFECTIVE DATE

1.1. "Effective Date" will be 10 days after the motion for approval is granted.

2. RELEASES

2.1. **Release by LWDA and Plaintiff.** Upon the Effective Date, the LWDA and Plaintiff, shall fully release and forever discharge claims for civil penalties under PAGA as plead or that could have been plead arising out of the same operative facts set forth the Complaint or the predicate PAGA letter arising during the PAGA Period ("Released Claims"), against Defendant and its past, present, and future parents, affiliated companies, subsidiaries, divisions, predecessors, successors, partners, joint venturers, shareholders, consultants, advisors, insurers, reinsurers and assigns, and each of their past, present and future officers, investors, directors, executives, trustees, agents, employees, attorneys, representatives, and any other persons or entities acting on behalf of or in concert with any of the foregoing, including, but expressly not limited to Mathew Zaheri (hereinafter "Released Parties"). Such claims for Civil Penalties include, but are not necessarily limited to, claims predicated upon the alleged violation of Labor Code sections 201, 202, 203, 204, 204.1, 210, 226, 226.3, 226.7, 510, 512, 1194, 1197, and 1199; and/or any applicable IWC Wage Order.

It is understood and agreed that this Agreement neither releases the Released Parties from liability, if any, to PAGA Employees for violations of any predicate statutes other than PAGA, nor effects a

waiver of claims by PAGA Employees against the Released Parties for the same, except that the Released Parties retain and are entitled to assert any and all arguments or defenses they believe they have as to the PAGA Employees, including res judicata, collateral estoppel, or equitable estoppel, on the basis that any or all PAGA Employees have been fully compensated for any and all alleged injuries, as a result of this Settlement and the payments described herein.

- 2.2. **Release by Plaintiff.** Plaintiff separately agrees to a general release through the Effective Date of any and all claims that he ever has had or may have had against Defendant and all Released Parties, including any and all claims under State or Federal law, in tort, common law or contract, whether pled in the Lawsuit or not, and all claims for any recovery including damages, penalties, fees, interest and costs ("Released Claims") except as provided in this Agreement.
- 2.3. **Section 1542.** Plaintiff expressly waives and relinquishes, to the fullest extent permitted by law, the provisions, rights and benefits under Section 1542 of the California Code of Civil Procedure as to the Released Claims, 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.

As used in Section 1542, the term creditor refers to Plaintiff Eric Chong.

3. **SETTLEMENT APPROVAL BY COURT**

- 3.1. **Plaintiff to Prepare.** Plaintiff's Counsel shall prepare, file and serve a motion or stipulation for approval of the PAGA penalties pursuant to California Labor Code §2699(l) advocating that the penalties are fair, adequate, and reasonable, which will draw no opposition from Defendant or Defense Counsel.

4. **NOTICE TO PAGA EMPLOYEES**

- 4.1. No later than 20 days after the Effective Date, Defendant shall provide the Settlement Administrator, ILYM Group, Inc., with a list of all PAGA Employees (the "PAGA Employees List"). The PAGA Employees List shall state each PAGA Employee's (1) full name, (2) last known address, (3) social security number, and (4) the total number of semi-monthly pay periods (or their equivalent) worked during the PAGA Period. This information shall be treated as and remain confidential and shall be used solely to manage the notice process described herein, shall not be disclosed to anyone other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written authorization of Defendant, the individual in question, or by order of the Court.
- 4.2. No later than 15 days after receipt of the Gross Settlement Fund (defined below) from Defendant, the Settlement Administrator will mail settlement checks and a letter explaining why the check is being sent to the PAGA Employees identified on the PAGA Employees List. Prior to mailing the Notices, the Settlement Administrator shall check the addresses provided using the National Change of Address database. Should any of the Notices be returned as undeliverable, the Settlement Administrator will have five (5) calendar days after it receives the returned undeliverable mail to search for a more current address for the PAGA Employee (via a skip trace or other reasonable method) and to re-mail Notices to the traced address.

5. **SETTLEMENT PAYMENT PROCEDURES:**

- 5.1. **Gross Settlement Fund.** No later than 10 days after the Effect Date, Defendant hereby agrees to make a payment to an account designated by the Settlement Administrator in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00) ("Gross Settlement Fund"), which shall be all inclusive, encompassing (i) all payments to the LWDA and PAGA Employees; (ii) any and all costs of third party administration of the settlement, (iii) Plaintiff's individual settlement, and (iv) Plaintiff's counsel's fees and costs.
- 5.2. **Pro Rata Increase.** At the mediation, Defendant estimated the number of semi-monthly pay periods (or their equivalent) between February 17, 2020, and the date of mediation (May 16, 2022) to be approximately 4,000. If the actual number of semi-monthly pay periods (or their equivalent) during the PAGA Period is at least 115% of that 4,000 estimate (e.g., more than 4,600), the Gross Settlement Fund will be increased by the actual percentage by which the number of semi-monthly pay periods (or their equivalent) during the PAGA Period exceeds the 115% threshold. Thus, by way of example, if the actual number of semi-monthly pay periods (or their equivalent) were 4,700, then the Gross Settlement Fund would increase by 2.17% (the ratio by which 4,700 exceeds 4,600).
- 5.3. **Net PAGA Settlement Fund.** Net PAGA Settlement Fund is the Gross Settlement Fund less all of the following: PAGA Counsel's Attorneys' Fees and Costs, Representative Plaintiff's Enhancement Award, and Settlement Administration Costs, as awarded by the Court.
- 5.3.1. The Net Settlement Fund shall be allocated to civil penalties (the "Penalties Fund"). A total of seventy-five percent (75%) of the Penalties Fund, shall be paid to the California Labor & Workforce Development Agency ("LWDA PAGA Payment"). The remaining twenty-five percent (25%) of the Penalties Fund shall be paid to the PAGA Employees (the "PAGA Employees Fund"). The entirety (100%) of the PAGA Employees Fund shall be payable to the PAGA Employees, and each PAGA Employee shall receive a *pro rata* share of this amount as further detailed below.
- 5.4. **Allocation of PAGA Employees' Fund.** Each PAGA Employee shall be sent a pro rata share of the PAGA Employees Fund. Each PAGA Employee's pro rata share shall be determined based on the number of semi-monthly pay periods (or their equivalent) that he or she worked for Defendant or any Released Party in the State of California during the PAGA Period, calculated as follows: the total number of semi-monthly pay periods (or their equivalent) worked by each individual *divided by* the aggregate number of semi-monthly pay periods (or their equivalent) worked by all aggrieved employees.
- 5.5. **Distribution and Taxes:** Because all amounts recovered pursuant to this settlement are civil penalties claimed under PAGA, the Individual Settlement Shares shall be treated as 1099 income. All Individual Settlement Shares will be reported on IRS Form 1099 by the Settlement Administrator, if required, and provided to the respective PAGA Employee and applicable governmental authorities. Within twenty (20) calendar days of distributing the Gross Settlement Fund, the Settlement Administrator shall provide to Plaintiff's and Defendant's Counsel written confirmation verifying that it effected disbursement of the Gross Settlement Fund pursuant to the terms of this Agreement.
- 5.6. **Expiration of Settlement Checks:** Settlement checks issued to PAGA Employees pursuant to this Agreement will expire one hundred and eighty (180) days from the date they are issued by the Settlement Administrator. After the 180 day-period, the Settlement Administrator shall remit any

unclaimed funds to the Unclaimed Property Fund with an identification of the PAGA Employees and the amounts allocated to each.

5.7. **Settlement Administrator Costs:** Any costs for administering the payments and Notices as specified in this Agreement, up to a maximum of \$5,000.00 ("Administration Costs"), will be deducted from the Gross Settlement Fund.

5.8. **Attorneys' Fees and Costs:** Defendant also agree that Plaintiff's attorneys shall be entitled to claim an Attorneys' Fees Payment of one-third of the Gross Settlement Fund (currently \$40,000.00) and an Attorneys' Costs Payment of actual costs of no more than \$9,000.00 as compensation for the reasonable attorneys' fees and costs incurred in connection with work performed to litigate the Lawsuit, which shall be deducted by the administrator from the Gross Settlement Fund. Should the Court not approve the fees and costs as claimed but approve instead a lower or higher amount from the Gross Settlement Fund, this agreement shall remain in effect as modified as to the Attorneys' Fee Payment and/or Attorneys' Cost Payment.

5.9. **Payment to Plaintiff for General Release:** Defendant also agrees to pay to Plaintiff, in exchange for his full general release of claims set forth in Paragraph 2.2 and other promises herein, the amount of Seven Thousand Five Hundred Dollars (\$7,500.00), which shall be deducted by the administrator from the Gross Settlement Fund. Should the Court not approve the additional payment for the general release of claims but approve instead a lower or higher amount from the Gross Settlement Fund, this agreement shall remain in effect as modified as to the payment for the general release of claims.

5.10. **No Effect on Employee Benefits:** The payments made to PAGA Employees pursuant to this Agreement shall have no effect on employee benefits. Defendant shall not make as part of this Agreement, nor be required to make, any deductions, nor pay any monthly contributions for any insurance, retirement, bonuses, 403(b), or profit-sharing plans related to monies paid as a result of this Agreement. The Individual Settlement Shares paid to PAGA Employees shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., bonuses, vacation, holiday pay, retirement plans, etc.) of PAGA Employees. The Parties agree that any Individual Settlement Shares paid to PAGA Employees under the terms of this Agreement do not represent any modification of PAGA Employees' previously credited hours of service or other eligibility criteria under an employee benefit plan sponsored by Defendant. Further, any Individual Settlement Shares are penalties and thus shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, and employee benefit plan or bonus plan sponsored by Defendant.

5.11. **Disputes Relating to Settlement Administration.** Any disputes concerning administration of the Settlement which cannot be resolved by the Parties shall be submitted to and resolved by the Court.

6. IMPACT OF NON-APPROVAL BY COURT

6.1. Should the Court not approve the PAGA penalties, the Parties shall request leave and work jointly to make reasonable efforts to remedy the settlement in order to obtain the Court's approval.

7. ENFORCEMENT AND CONTINUING JURISDICTION OF THE COURT

- 7.1. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain continuing jurisdiction over this Lawsuit and over all Parties, to the fullest extent to enforce and effectuate the terms and intent of the Settlement and this Agreement.

8. NO ADMISSION OF WRONGDOING

- 8.1. Defendant denies that it or any Released Party has engaged in any unlawful activity, failed to comply with the law in any respect, or that it or they have any liability to anyone under the claims asserted in the Action. The Parties agree that this Agreement does not constitute an admission by Defendant or any of the Released Parties of any of the matters alleged in the action or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiff, Defendant or any of the Released Parties.

9. NON-EVIDENTIARY USE

- 9.1. Neither this Agreement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose—in any action or proceeding in whatever forum—adverse to Plaintiff, the LWDA, Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against Plaintiff, the LWDA, or any of the Released Parties in any further proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to attempt to establish that a PAGA Employee and/or the LWDA has resolved or been compensated for any claims made by that employee.

10. CHOICE OF LAW

- 10.1. The rights and obligations of the Parties under this Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California. California law shall govern the interpretation of this Agreement even if a choice of law analysis under state or federal law would dictate that another forum's law be applied.

11. COOPERATION

- 11.1. Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

12. SEVERABILITY

- 12.1. If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, that provision shall be deemed severed and deleted from this Agreement, and neither that provision nor its severance and deletion shall affect the validity of the remaining provisions.

13. ADDITIONAL TERMS

13.1. This Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in interest.

13.2. Given that all Parties hereto had the opportunity to draft, review, and edit the language of this Agreement, no presumption for or against any Party arising out of drafting all or any part of this Agreement may be applied in any action relating to, connected to, or involving this Agreement. Accordingly, the Parties hereby waive the benefit of any legal principle or rule providing that, in cases of uncertainty, the language of a contract should be interpreted against the Party who caused the uncertainty to exist.

13.3. This Agreement may be executed in counterparts. A signature by way of facsimile shall serve as an original for all purposes.

13.4. Headings in this Agreement are included solely for convenience and shall not control the meaning or interpretation of any provision of this Agreement.

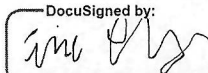
14. ENTIRE AGREEMENT

This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. Any modification to this Agreement must be in writing and signed by Plaintiff and an authorized officer of Defendant.

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Private Attorneys General Act Settlement Agreement and Release as of the date set forth below.

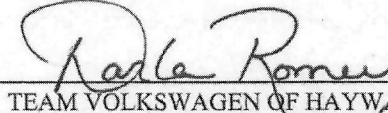
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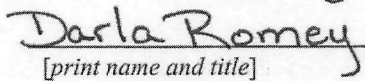
Date

DocuSigned by:

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ERIC CHONG

6/28/2022

Date


TEAM VOLKSWAGEN OF HAYWARD CORPORATION


[print name and title] Director of HR

APPROVED AS TO FORM

7/07/2022

Date


MELMED LAW GROUP, P.C.
Attorneys for ERIC CHONG

7 July 2022
Date


FINE, BOGGS & PERKINS LLP
Attorneys for Team Volkswagen of Hayward Corporation