

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Michael Sanders, on behalf of himself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

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

MICHAEL SANDERS, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

KDW AUTOMOTIVE, INC., a Delaware
corporation, DOES 1 through 10, inclusive,

Defendants.

CASE NO: 21GDCV00857

Assigned to the Hon. David A. Rosen, Dept. E

**DECLARATION OF DANIEL F. GAINES
IN SUPPORT OF STIPULATION AND
[PROPOSED] ORDER PERMITTING
FILING OF FIRST AMENDED
COMPLAINT, APPROVING
SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIMS,
AND DISMISSING THE ACTION WITH
PREJUDICE**

Complaint Filed: June 21, 2021

I, DANIEL F. GAINES, hereby declare and state as follows:

1. I am an attorney duly admitted to the practice of law in the State of California. I am a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Michael Sanders (“Plaintiff”) in this action. I have personal knowledge of the facts set forth herein and if called as a witness to testify to them, I could and would do so competently.

\\

1 2. I obtained my BS degree from the University California at Berkeley in 2003. I majored
2 in Business Administration at the Haas School of Business.

3 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
4 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
5 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my studies
6 on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

7 4. Since becoming a member of the Bar, and until his recent retirement, I have practiced
8 law with my father, Kenneth, at Gaines & Gaines, APLC. Our practice specializes in litigation, with
9 an emphasis in business, real estate, and employment disputes like this one. Over 95% of my practice
10 is devoted to complex employment litigation similar to the instant action.

11 5. My firm has represented employees in employment matters such as this one, with an
12 emphasis in wage and hour issues. I have participated in and have been certified as Court-approved
13 class counsel in dozens of class and representative action matters since my admission to the Bar. A
14 true and correct list of the cases in which I have been appointed as class counsel is attached hereto as
15 **Exhibit “A”**.

16 6. On April 8, 2021, Plaintiff complied with the requirements set forth in Labor Code §
17 2698 *et seq.*, the Labor Code Private Attorneys General Act (hereinafter, “PAGA”) by sending a
18 letter, by online submission to the Labor and Workforce Development Agency (“LWDA”) and by
19 certified mail to Defendant KDW Automotive, Inc. (“Defendant”) (hereinafter Plaintiff and
20 Defendant are collectively referred to as the “Parties”), setting forth the facts and theories of the
21 violations alleged against Defendant. A true and correct copy of the letter submitted to the LWDA is
22 attached hereto as **Exhibit “B”**.

23 7. Plaintiff filed his Representative Action Complaint on June 21, 2021 seeking penalties
24 pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 201, 202, 226(a), 226.7, 510, and
25 512 and penalties pursuant to Labor Code § 2699(a) for violations of Labor Code §§ 226.3 and 558
26 (“the Action”).

27 8. The Parties then engaged in informal discovery, which provided my office sufficient
28 information to conduct a legitimate investigation into the allegations of the action and potential

1 defenses thereto. The Parties have reached this settlement only after such discovery and investigation
2 was performed.

3 9. Defendant denied and continues to deny any liability to Plaintiff or any other allegedly
4 aggrieved employee for any violations alleged in the Action.

5 10. On March 31, 2022, the Parties mediated with well-respected mediator Marc J. Feder,
6 Esq., and reached a settlement of the action which was memorialized in a settlement agreement signed
7 by all Parties.

8 11. The Parties engaged in arm's-length negotiations and reached a resolution of all claims
9 asserted by Plaintiff. Based on the information and documents obtained through informal discovery
10 and during mediation, Plaintiff assessed the maximum value of the PAGA claims (without stacking)
11 to be approximately \$500,000 (at the rate of a \$100 penalty for 5,000 total pay periods at issue for
12 approximately 200 aggrieved employees during the applicable time frame).

13 12. The amount of the settlement is \$150,000 which represents 30% of the maximum
14 recoverable discretionary penalties and includes an apportionment of attorneys' fees and costs and an
15 Individual Claim Payment to Plaintiff.

16 13. Based on my extensive experience litigating representative employment actions, I
17 believe that the settlement amount represents a fair compromise of the claims.

18 14. The Parties request that Court enter the accompanying order, permitting the filing of
19 the First Amended Complaint, approving the settlement as reflected in the Parties' Settlement
20 Agreement and Release of Claims, a true and correct copy which is attached hereto as **Exhibit "C"**,
21 as permitted by Labor Code § 2699(l), and dismissing this Action with prejudice.

22 15. Attached hereto as **Exhibits "D" and "E"** are true and correct copies of the proposed
23 First Amended Complaint, and a redline copy for the Court's convenience, respectively. Notice of all
24 Labor Code violations alleged in the proposed amended complaint and released by the proposed
25 settlement were provided to the LWDA and Defendant on April 25, 2022, a copy of which notice is
26 attached hereto as **Exhibit "F"**.

27 16. On June 30, 2022, my office uploaded the proposed Settlement Agreement and these
28 accompanying approval documents to the LWDA through the State of California, Department of

1 Industrial Relations Website at [https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
2 [Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html).

3 I declare, under penalty of perjury, under the laws of the State of California, that the foregoing
4 is true and correct. Executed this 30th day of June, 2022 at Westlake Village, California.

5
6 *Daniel F. Gaines*
7 DANIEL F. GAINES
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

GAINES & GAINES

A PROFESSIONAL LAW CORPORATION

WWW.GAINESLAWFIRM.COM

27200 AGOURA ROAD, SUITE 101
CALABASAS, CALIFORNIA 91301

PHONE (818) 703-8985
FAX (818) 703-8984

April 8, 2021

Via Certified Mail

Labor & Workforce Development Agency
By online submission

KDW Automotive, Inc.
1221 S. Brand Blvd.
Glendale, CA 91204

Defendant mailed certified # 70190700000201198582

Agent for Service of Process for KDW Automotive, Inc.
C T Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Agent mailed certified # 70190700000201198575

Re: ***Labor Code Violations of KDW Automotive, Inc. – Compliance Letter of
California Labor Code § 2698 - Private Attorneys General Act***

Dear LWDA:

This office represents Michael Sanders, a former non-exempt California employee of KDW Automotive, Inc. ("Defendant"). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client was employed in Southern California. Herein, we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its non-exempt California employees ("Aggrieved Employees").

Our client alleges that Defendant failed to pay premium wages to him and Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 7-2001. Our client and Aggrieved Employees were routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first or second meal period. When they were able to take a meal period, they were oftentimes late, cut short, interrupted, or employees would be forced to eat while working off-the-clock, resulting in further unpaid wages. This violates Labor Code §§ 226.7, 510, 512, 558 and 1194 and IWC Wage Order 7-2001.

Labor & Workforce Development Agency
KDW Automotive, Inc.
C T Corporation System
April 8, 2021
Page 2

Our client also alleges that Defendant failed to pay premium wages to him and Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 7-2001. Our client and Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. Our client and Aggrieved Employees were simply denied rest periods altogether because they were too busy to take them and Defendant did not maintain enough staffing to allow for them to be taken. This violates Labor Code §§ 226.7 and 558 and IWC Wage Order 7-2001.

Our client further alleges that Defendant failed to provide him and all other Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code §§ 226(a) and 226.3. Our client and other Aggrieved Employees were not paid all wages due and premium meal and rest period wages due, as stated above. As such, the wage statements provided by Defendant failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding number of hours of worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3. Independent of the above allegations, the wage statements issued to our client and all other Aggrieved Employees failed to set forth the accurate total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding number of hours of worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3. The wage statements overstate the total hours worked by improperly including duplicate hours worked at certain rates of pay and set forth the overtime rate as only the overtime premium and not the correct applicable rate of one and one-half times the regular rate of pay.

Our client further alleges that Defendant failed to pay him all wages due at the separation of his employment based on the time frames required by Labor Code §§ 201 and 202. As stated above, our client and other Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of our client and certain Aggrieved Employees.

The \$75 PAGA filing fee has been mailed to the LWDA concurrently with the transmission of this letter.

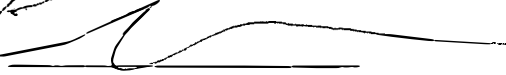
We invite Defendant or its attorney to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.

Very truly yours,

Labor & Workforce Development Agency
KDW Automotive, Inc.
C T Corporation System
April 8, 2021
Page 3

GAINES & GAINES
A Professional Law Corporation

By: 

EVAN S. GAINES

EXHIBIT C

1 DANIEL GAINES (SBN 251488)
daniel@gaineslawfirm.com

2 ALEX KATOFISKY (202754)
alex@gaineslawfirm.com

3 EVAN GAINES (287668)
evan@gaineslawfirm.com

4 GAINES & GAINES, APLC
27200 Agoura Rd., Ste. 101
5 Calabasas, CA 91301
Tel: 818.703.8985
6 Fax: 818.703.8984

7 Attorneys for Plaintiff
Michael Sanders

8 John A. Mavros, Esq. (SBN 257673)
9 jmavros@fisherphillips.com

10 Bret Martin (SBN 304658)
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
11 Irvine, CA 92614-8240
Tel: (949) 851-2424
12 Fax: (949) 851-0152

13 Attorneys for Defendant
KDW AUTOMOTIVE, INC.

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF LOS ANGELES

18 MICHAEL SANDERS, on behalf of himself and all
"aggrieved employees" pursuant to Labor Code §
19 2698 *et seq.*,

20 Plaintiffs,

21 v.

22 KDW AUTOMOTIVE, INC., a Delaware
corporation, and DOES 1 through 10, inclusive,

23
24 Defendants.

Case No. 21GDCV00857

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

1 This Settlement Agreement and Release of Claims ("Agreement") is between Plaintiff Michael
2 Sanders ("Plaintiff"), on behalf of himself and other aggrieved employees, and Defendant KDW
3 Automotive, Inc. ("Defendant") (collectively, with Plaintiff, the "Parties"). By executing this
4 Agreement, the Parties intend to settle the lawsuit entitled *Sanders, et al. v. KDW Automotive, Inc.*,
5 Case No. 21GDCV00857 (Los Angeles County Superior Court, filed June 21, 2021) (the "Action")
6 involving claims brought under the California Labor Code Private Attorneys General Act of 2004
7 ("PAGA").

8 **I. DEFINITIONS**

9 1. "Administration Fees" refers to the amount to be paid to ILYM Group, Inc. (or any
10 other third-party settlement administrator approved by the Parties ("Settlement Administrator")) for
11 costs associated with administration of the settlement contemplated by this Agreement, including costs
12 for, among other things, printing, copying, formatting, translation of materials, postage, envelopes,
13 computer searches to locate addresses, calculation of payments to individual class members,
14 calculation of applicable withholdings and taxes (if required by law), costs associated with the process
15 for any uncashed settlement checks, and any other expenses the Settlement Administrator incurs to
16 complete the settlement process according to the terms of this Agreement. The Settlement
17 Administrator will be responsible for establishing a qualified settlement account, and issuing all
18 payments and appropriate tax forms (if required by law). The Parties agree that Administration Fees
19 will not exceed \$5,000, all of which are to be taken from the PAGA Gross Settlement Amount (as
20 defined below).

21 2. "Aggrieved Employees" consists of all non-exempt employees of KDW Automotive,
22 Inc. employed in California at any time between April 8, 2020 and April 10, 2022.

23 3. "Attorneys' Fees and Costs" means the amount of money to be paid from the PAGA
24 Gross Settlement Amount (as defined below) to Gaines & Gaines, APLC ("Plaintiff's Counsel") in
25 full satisfaction of all claims Plaintiff may have for reasonable attorneys' fees, litigation costs, and
26 expenses incurred in the Action. The amount of attorneys' fees awarded to Plaintiff's Counsel may
27 not exceed 35% of the PAGA Gross Settlement Amount, and the amount of litigation costs and
28

1 expenses (combined) may not exceed \$12,000. Defendant will not object to or otherwise oppose
2 requests consistent with this paragraph.

3 4. **"Effective Date"** shall be the later of the following dates (a) if no objection(s) are
4 made, the date on which the Court approves this Agreement and dismisses the Action with prejudice
5 through entry of the Order (as defined herein); (b) if any objection(s) are made, the applicable date
6 for seeking appellate review of the Order has passed without a timely appeal or request for review
7 having been made; and (c) if any appeal and/or request for review is sought, the expiration of any
8 time periods for appeal and/or the conclusion of any and all appeal proceedings and/or subsequent
9 trial court proceedings on remand regarding the Order. No money will be distributed unless and
10 until the Effective Date occurs.

11 5. **"Individual Settlement Payments to Aggrieved Employees"** means the individual
12 payments that shall be made to each Aggrieved Employee under this Agreement, which in the
13 aggregate shall total 25% of the PAGA Net Settlement Amount (as defined below).

14 6. **"PAGA Gross Settlement Amount"** means One Hundred Fifty Thousand Dollars
15 (\$150,000). This amount shall be used to satisfy all liabilities arising from this Agreement,
16 including Attorneys' Fees and Costs, Plaintiff's Individual Claim Payment (as defined below),
17 Individual Settlement Payments to Aggrieved Employees, Administration Fees, and payment to the
18 Labor and Workforce Development Agency ("LWDA"). Defendant shall pay exactly the PAGA
19 Gross Settlement Amount to fulfill all of its obligations under this settlement.

20 7. **"PAGA Net Settlement Amount"** means the amount, as approved by the Court, after
21 Attorneys' Fees and Costs, Plaintiff's Individual Claim Payment, and Administration Fees are
22 subtracted from the PAGA Gross Settlement Amount.

23 8. **"Plaintiff's Individual Claim Payment"** means the amount to be paid to Plaintiff
24 Sanders in consideration for his general release of all claims, as set forth in Paragraph 23 below.
25 Plaintiff's Individual Claim Payment shall be in addition to the amount payable to Plaintiff as the
26 Individual Settlement Payments to Aggrieved Employees. Plaintiff's Individual Claim Payment
27 shall not exceed \$5,000. Plaintiff will receive an IRS Form 1099 from the Settlement Administrator
28

1 and will be solely responsible for reporting and paying all applicable federal, state and local tax.
2 Defendant will not object to or otherwise oppose requests consistent with this paragraph.

3 9. "Settlement Period" means April 8, 2020 through April 10, 2022.

4 **II. RECITALS AND PROCEDURAL HISTORY**

5 10. **Allegations in the Complaint and Amendment Thereto.** On June 21, 2021,
6 Plaintiff Sanders filed the Action in the Superior Court of California, County of Los Angeles,
7 individually and on behalf of all "aggrieved employees" pursuant to Labor Code §§ 2698 *et seq.* In
8 the operative Complaint, Plaintiff alleges a single claim for penalties under PAGA.

9 11. **Defendant's Denials.** Nothing in this Agreement, or in the Memorandum of
10 Understanding executed by the Parties at mediation, shall constitute an admission on behalf of
11 Defendant of any form of liability or the accuracy of any allegation against it. Defendant denies
12 (1) all the material allegations in the Action; (2) that it violated any applicable laws; and (3) that it
13 is liable for damages, penalties, attorneys' fees, costs, or any other form of compensation or remedy
14 with respect to the claims asserted in the Action. Nevertheless, without admitting any liability or
15 wrongdoing, Defendant has agreed to settle the Action on the terms set forth in this Agreement to
16 avoid the burden, expense, and uncertainty of litigation. Any statements by Defendant in this
17 Agreement are made for settlement purposes only.

18 12. **Counsel's Investigation.** Plaintiff's Counsel has investigated the facts relating to the
19 claims alleged in the Action and also has analyzed all defenses. Plaintiff's Counsel also engaged in
20 informal discovery and obtained the production of relevant data from Defendant prior to settlement
21 discussions, to allow Plaintiff's Counsel to further investigate and evaluate the claims and defenses
22 in this Action.

23 13. **Negotiation of Settlement.** Plaintiff's Counsel engaged in arms-length negotiations
24 with Defendant through mediator Marc Feder, Esq. on March 31, 2022 with a view toward achieving
25 substantial benefits for the Aggrieved Employees and the State of California, while avoiding the
26 cost, delay, and uncertainty of further litigation. The mediation culminated with a mediator's
27 proposal that was accepted by the Parties.
28

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0

1
2
3
4
5

6
7
8
9
0
1
2
3
4
5
6
7

1 **17. Funding of the Settlement.** Within 20 business days after the Effective Date,
2 Defendant will deposit the PAGA Gross Settlement Amount into a Qualified Settlement Account
3 ("QSA") to be established by the Settlement Administrator.

4 **18. Settlement Payments.** Within 15 calendar days of the funding of the QSA, the
5 Settlement Administrator shall issue the following payments from the QSA: (a) the Individual
6 Settlement Payments to Aggrieved Employees (including Plaintiff); (b) the LWDA PAGA Payment
7 (as defined below) to the LWDA; (c) Plaintiff's Individual Claim Payment to Plaintiff;
8 (d) Attorney's Fees and Costs to Plaintiff's Counsel; and (e) the Administration Fees to itself. The
9 Settlement Administrator, and not Defendant, will issue appropriate tax forms for all payments
10 issued under this Settlement, if and as required by law as determined by the Settlement
11 Administrator. Because the payments made under this Agreement will be made with respect to only
12 the PAGA claims for all Aggrieved Employees and the individual claims for Plaintiff, this
13 Agreement is not subject to the rules governing the settlement of class or collective actions.
14 Accordingly, the settlement payments shall be distributed without a claims process or an opportunity
15 to object or opt out.

16 **19. Calculation of Individual Settlement Payments to Aggrieved Employees.** The
17 PAGA Net Settlement Amount will be distributed as follows:

18 a. 75% of the PAGA Net Settlement Amount shall be paid to the LWDA (the
19 "LWDA PAGA Payment"); and

20 b. The remaining 25% of the PAGA Net Settlement Amount (the "Aggrieved
21 Employee Settlement Amount") shall be distributed to all Aggrieved Employees, with each
22 Aggrieved Employee receiving an Individual Settlement Payment based on the number of pay
23 periods he or she worked for Defendant in California during the Settlement Period. The Aggrieved
24 Employee Settlement Amount will be divided by the total number of such pay periods to yield the
25 Pay Period Value. Each Aggrieved Employee shall be paid an Individual Settlement Payment equal
26 to their individual number of pay periods multiplied by the Pay Period Value.

27 **20. Distribution of Individual Settlement Payments to Aggrieved Employees.** The
28 Settlement Administrator will issue to each Aggrieved Employee a check in the amount of his or

1 her Individual Settlement Payment, along with an explanatory letter in the form attached hereto as
2 Exhibit A, within the time parameters set forth in paragraph 18 above. Checks shall remain
3 negotiable for 180 days. Any checks returned as non-deliverable on or before the check cashing
4 deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed
5 thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt
6 to determine the correct address using a skip-trace, or other search using the name, address, or Social
7 Security number of the Aggrieved Employee, and will then perform a single re-mailing. Funds
8 contained in the settlement checks that are returned as undeliverable and in settlement checks
9 uncashed for more than 180 days after issuance will be tendered to the California State Controller's
10 Office - Unclaimed Property Fund, to be held in the name of the Aggrieved Employee. The Parties
11 agree that this disposition results in no "unpaid residue" under California Code of Civil Procedure
12 section 384, as the entire PAGA Net Settlement Amount will be paid out to the Aggrieved
13 Employees. Therefore, Defendant will not be required to pay any interest on said amount. All
14 settlement payments to Aggrieved Employees will be treated as miscellaneous income for which a
15 1099 will be issued to the extent required by law.

16 **21. Attorneys' Fees and Costs.** As referenced above, Plaintiff's Counsel intends to
17 request, and Defendant agrees not to oppose, that the Court award Plaintiff's Counsel, (a) attorneys'
18 fees in an amount up to 35% of the PAGA Gross Settlement Amount, and (b) costs and expenses
19 incurred in representing the interests of the Aggrieved Employees up to \$12,000. These amounts
20 shall be paid from the PAGA Gross Settlement Amount. Defendant shall have no liability for any
21 other attorneys' fees or costs. If the Court approves a lesser amount for either fees or costs and
22 expenses, this will not impact the enforceability of this Agreement and the difference will remain
23 part of the PAGA Net Settlement Amount. The Settlement Administrator shall issue Plaintiff's
24 Counsel the Attorneys' Fees and Costs within the time parameters set forth in paragraph 18 above,
25 together with Forms 1099. Plaintiff's Counsel agree that they are solely responsible for paying all
26 applicable taxes on any payments they receive hereunder.

27 **22. Release of PAGA Claims.** Upon Court approval of the Settlement, dismissal of the
28 Action with prejudice, and subject to Defendant's full payment of the PAGA Gross Settlement

1 Amount, Plaintiff and Aggrieved Employees will fully and finally release and discharge Defendant
2 and its former, present and future owners, parents, subsidiaries, predecessors, and successors, and
3 all of their current, former and future officers, directors, members, managers, employees,
4 consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants,
5 insurers, and legal representatives ("Released Parties"), from all claims, rights, demands, liabilities
6 and causes of action for civil penalties under the PAGA that arose during employment in a non-
7 exempt position in California during the Settlement Period, based on the factual allegations pled in
8 the operative complaint in the Action.

9 **23. Additional General Release of Claims by Plaintiff Sanders.** Upon Court approval
10 of the Settlement, dismissal of the Action with prejudice, and subject to Defendant's full payment
11 of the PAGA Gross Settlement Amount, in addition to the release given by each Aggrieved
12 Employee, Plaintiff Sanders shall be deemed to have fully, finally, and forever released the Released
13 Parties from any and all claims, obligations, demands, actions, rights, causes of action, and liabilities
14 against the Released Parties, of whatever kind and nature, character, and description, whether in law
15 or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance,
16 regulation, common law, or other source of law, whether known or unknown, and whether
17 anticipated or unanticipated, including unknown claims covered by Civil Code Section 1542, arising
18 through the date of his signature hereon, for any type of relief, including, without limitation, claims
19 for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest,
20 attorneys' fees, litigation costs, restitution, or equitable relief. These claims include, but are not
21 limited to, the released PAGA claims, as well as any other claims under any provision of the
22 California Labor Code or any applicable California Industrial Welfare Commission Wage Orders,
23 and claims under local, state, or federal statutes, including, without limitation, the California Fair
24 Employment and Housing Act, California Government Code §§ 12940 *et seq.*; the Unruh Civil
25 Rights Act, California Civil Code §§ 51 *et seq.*; the California Constitution; Title VII of the Civil
26 Rights Act of 1964, 42 U.S.C. §§ 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C.
27 §§ 12101 *et seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.*;
28 the Family and Medical Leave Act; the California Family Rights Act; the Sarbanes-Oxley Act of

1 2002; the Occupational Safety and Health Act; the Families First Coronavirus Response Act; and
2 all of their implementing regulations and interpretive guidelines. With respect to these Released
3 Claims as described in this Section, Plaintiff Sanders shall be deemed to have expressly waived and
4 relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits he may
5 otherwise have had pursuant to Section 1542 of the California Civil Code, which provides as
6 follows:

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

11 Notwithstanding Section 1542, Plaintiff understands and agrees that this Agreement shall act as a
12 release of all future claims that may arise from Plaintiff Sanders' employment or separation from
13 employment with Defendant, or any other matters that existed between Plaintiff Sanders and the
14 Released Parties up to the date of this Agreement, whether such claims are currently known or
15 unknown, and that Plaintiff intentionally waives any rights he may have under the provisions of
16 Section 1542, as well as under any other statutes or common law principles of similar effect in the
17 State of California or in any other state.

18 **24. No Credit Toward Benefit Plan.** Payments to Aggrieved Employees, including
19 Plaintiff, as referenced herein will not be utilized to calculate any additional benefits under any
20 benefit plans to which any Aggrieved Employee may be eligible, including, but not limited to profit-
21 sharing plans, bonus plans, 401(k) or 403(b) plans, vacation plans, sick leave plans, PTO plans, and
22 any other benefit plan. Rather, it is the Parties' intention that this Agreement will not affect any
23 rights, contributions, or amounts to which any Aggrieved Employee may be entitled under any
24 benefit plans.

25 **25. Circular 230 Disclaimer.** Each Party to this Settlement Agreement acknowledges
26 and agrees that (1) no provision of this Agreement, and no written communication or disclosure
27 between or among the Parties or their attorneys or other advisors, is or was intended to be, nor will
28 any such communication or disclosure constitute or be construed or be relied upon as, tax advice

1 within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as
2 amended); (2) each Party (a) has relied exclusively upon her or its own, independent legal and tax
3 counsel for advice (including tax advice) in connection with this agreement, (b) has not entered into
4 this Agreement based upon the recommendation of any other Party or any attorney or advisor to any
5 other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or
6 advisor to any other Party to avoid any tax penalty that may be imposed on the Party; and (3) no
7 attorney or advisor to any other Party has imposed any limitation that protects the confidentiality of
8 any such attorney's or advisor's tax strategies (regardless of whether such limitation is legally
9 binding) upon disclosure by the Party of the tax treatment or tax structure of any transaction,
10 including any transaction contemplated by this Agreement.

11 **26. No Prior Assignment.** Plaintiff represents and warrants that he has not assigned or
12 transferred any portion of any claims, demands, obligations, causes of action, rights, or liabilities
13 that, but for such assignment or transfer, would be released under this Agreement.

14 **27. Nullification of Settlement Agreement.** Unless otherwise noted herein, if (i) the
15 Court does not approve the settlement as provided or (ii) the settlement does not become final for
16 any other reason, then this Agreement, the Memorandum of Understanding, and any documents
17 generated to bring it into effect will be null and void, and the Parties will be returned to their original,
18 respective positions.

19 **28. No Publicity; Confidentiality.** No party hereto (including the Parties' attorneys)
20 shall publicize this settlement, this Agreement, any terms of this Agreement (including, but not
21 limited to, the PAGA Gross Settlement Amount), or any information about the negotiations leading
22 to the execution of this Agreement. This includes, but not limited to, communications through any
23 social media and information available on the Parties' attorneys' websites, unless so ordered by the
24 Court. Nothing herein limits or purports to limit Plaintiff's Counsel's ability or right to respond to
25 Aggrieved Employee inquiries about this Settlement or to submit this Settlement to the LWDA and
26 the Court for the purpose of obtaining approval of the Settlement and in compliance with the
27 requirements of PAGA.
28

1 29. **Continued Jurisdiction.** After entry of the Order, the Court shall retain, and will
2 have continuing, jurisdiction solely for purposes of addressing: (i) the interpretation and
3 enforcement of the terms of this Agreement; (ii) settlement administration matters; and (iii) such
4 matters as may be appropriate under court rules or as set forth in this Agreement, as permitted by
5 Code of Civil Procedure section 664.6 and any other applicable law.

6 30. **Entire Agreement.** This Agreement constitutes the entirety of the Parties' settlement
7 terms. No other prior or contemporaneous written or oral agreements may be deemed binding on
8 the Parties.

9 31. **Amendment or Modification.** This Agreement may be amended or modified only
10 by a written instrument, signed by both Parties, their successors-in-interest, or their counsel.

11 32. **Authorization to Enter into a Settlement Agreement.** Counsel for all Parties
12 warrant and represent they are expressly authorized by the Parties whom they represent to negotiate
13 this Agreement and to take all appropriate action required or permitted to be taken by such Parties
14 pursuant to this Agreement. The Parties and their counsel will cooperate with each other and use
15 their best efforts to effect the implementation of the settlement.

16 33. **Binding on Successors and Assigns.** This Agreement will be binding upon, and
17 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

18 34. **Governing Law.** All terms of this Agreement shall be governed by, and interpreted
19 according to, the laws of the State of California.

20 35. **Execution and Counterparts.** This Agreement is subject only to the execution of all
21 Parties. However, the Agreement may be executed in one or more counterparts. All executed
22 counterparts and each of them, including fax and scanned copies of the signature page, will be
23 deemed to be one and the same instrument.

24 36. **Invalidity of any Provision.** Before declaring any provision of this Settlement
25 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
26 possible consistent with applicable precedents so as to define all provisions of this Settlement
27 Agreement valid and enforceable.
28

1 37. **Construction and Interpretation.** Headings and paragraph titles are inserted as a
2 matter of convenience and for reference, and in no way define, limit, extend or describe the scope
3 of this Agreement or any of its provisions. Each term of the Agreement is contractual.

4 38. **Waiver.** No waiver of any condition or covenant contained in this Agreement or
5 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
6 constitute a further waiver by such party of the same or any other condition, covenant, right or
7 remedy.

8 39. **Enforcement Action.** In the event that one or more of the Parties institutes any legal
9 action or other proceeding against any other Party or Parties to enforce the provisions of this
10 Agreement or to declare rights and/or obligations under this Agreement, the successful Party will
11 be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs, including
12 expert witness fees incurred in connection with any enforcement action.

13 40. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms
14 and conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly
15 against one party merely by virtue of the fact that it may have been prepared by counsel for one of
16 the Parties, it being recognized that, because of the arm's-length negotiations between the Parties,
17 all Parties have contributed to the preparation of this Agreement.

18 41. **Representation by Counsel.** The Parties acknowledge that they have been
19 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
20 and that this Agreement has been executed with the consent and advice of counsel, and reviewed in
21 full.

22 42. **Cooperation and Execution of Necessary Documents; Stipulation/Motion for**
23 **Court Approval.** All Parties will cooperate in good faith and execute all documents to the extent
24 reasonably necessary to effectuate the terms of this Agreement. Plaintiff's Counsel shall prepare
25 and file a joint stipulation for Court approval of the Settlement (or a motion if required by the Court)
26 as soon as practicable. Plaintiff's Counsel shall submit the stipulation/motion to Defendant's
27 counsel for approval a reasonable time prior to filing.
28

1 43. **Binding Agreement.** The Parties warrant that they understand and have full authority
2 to enter into this settlement, and further intended that this Agreement will be fully enforceable and
3 binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding
4 to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might
5 apply under federal or state law.

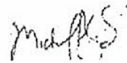
6 44. **Compliance with PAGA's Procedural Requirements.** Plaintiff agrees that
7 Plaintiff's Counsel will notify the LWDA of the Settlement at the same time this Settlement is
8 submitted to the Court for approval, and perform any and all statutory tasks as required by law
9 necessary to effectuate consummation and approval of this Settlement.

10 45. **Representation Regarding the Number of Aggrieved Employees.** Defendant
11 represents that there are no more than 200 Aggrieved Employees who worked no more than 5,000
12 pay periods in California during the Settlement Period through March 1, 2022. If the actual number
13 of pay periods during the Settlement Period is in excess of a 10% increase (e.g. exceeds 5,500 pay
14 periods), Defendant shall increase the PAGA Gross Settlement Amount in proportion to the increase
15 in pay periods over the 10% threshold (e.g., if the number of pay periods increases to 6,000, the
16 PAGA Gross Settlement Amount will increase by 10% $[500/5,000]$ to \$165,000).

17 SO AGREED:

18
19 05 / 09 / 2022
Dated:

Plaintiff Michael Sanders

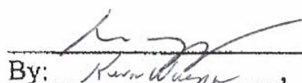


Michael Sanders

22
23 Dated:

Defendant KDW Automotive, Inc.

24 5/11/2022

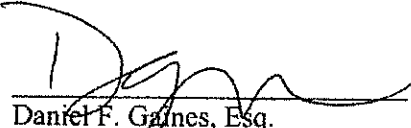
25 By: 
26 its 

1 APPROVED AS TO FORM, AND AGREED TO AS APPLICABLE:

2 Dated:

3 5/10/2022

GAINES & GAINES, APLC

4 
Daniel F. Gaines, Esq.
5 Counsel for Plaintiff

6
7 Dated: June 14, 2022

FISHER & PHILLIPS LLP

8 
9 John A. Mavros, Esq.
10 Counsel for Defendant

1 EXHIBIT A

2 Date

3 NOTICE OF SETTLEMENT

4 Los Angeles County Superior Court Case No. _____
5 Case Name: *Michael Sanders v. KDW Automotive, Inc.*

6 «FirstName» «LastName»
7 «Address1» «Address2»
8 «City» «State» «Zip»

9 You are receiving the enclosed check in settlement of a lawsuit entitled Michael Sanders,
10 on behalf of himself and all "aggrieved employees" pursuant to Labor Code § 2698 et seq.,
11 "Plaintiffs," v. KDW Automotive, Inc., a Delaware corporation, and DOES 1 through 10,
12 inclusive, ("Defendant"), Superior Court of the State of California, County of Los Angeles, Case
13 Number 21GDCV00857 (the "Lawsuit").

14 In the Lawsuit, Plaintiff pursued various claims for penalties against Defendant under the
15 California Private Attorneys General Act of 2004 ("PAGA") related to underpaid wages,
16 underpaid meal and rest period premiums, inaccurate wage statements, and late payment of final
17 wages. Defendant denies Plaintiff's claims in their entirety, and asserts it complied with the
18 applicable law. However, the parties believe that continued litigation would be protracted,
19 expensive, uncertain, and contrary to their best interests and, therefore, agreed to settlement of this
20 lawsuit. The court has not ruled on the merits of this lawsuit, but it has approved the civil
21 penalties settlement amount to be paid by Defendant. The settlement addresses claims for PAGA
22 penalties on behalf of all non-exempt employees of KDW Automotive, Inc. employed in
23 California at any time between April 8, 2020 and April 10, 2022. No wage claims are released or
24 otherwise affected by this settlement.

25 According to Defendant's records, you are an Aggrieved Employee and are therefore
26 entitled to a share of the settlement. Enclosed with this Notice is your settlement check. The
27 settlement check shall remain valid for one hundred eighty (180) calendar days. Checks remaining
28 un-cashed for more than 180 days after issuance will become void and the outstanding balance
will be tendered to the California State Controller's Office - Unclaimed Property Fund, to be held
in your name.

If you have additional questions, you may contact the lawyers for Plaintiff:

Daniel F. Gaines
Alex P. Katofsky
GAINES & GAINES, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
daniel@gaineslawfirm.com
Phone: (866) 550-0855

EXHIBIT D

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Michael Sanders, on behalf of himself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

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

MICHAEL SANDERS, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

KDW AUTOMOTIVE, INC., a Delaware
corporation, DOES 1 through 10, inclusive,

Defendants.

CASE NO: 21GDCV008857

Assigned to the Hon. David A. Rosen, Dept. E

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201-202, 226(a), 226.7, 510, 512, AND
1194 AND PURSUANT TO LABOR CODE
§ 2699(a) FOR VIOLATIONS OF LABOR
CODE §§ 226.3 AND 558**

Complaint Filed: June 21, 2021

1 Plaintiff MICHAEL SANDERS (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of KDW
3 AUTOMOTIVE, INC., a Delaware corporation, and/or any subsidiaries or affiliated companies
4 (hereinafter referred to as “Defendant”), as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and other non-exempt California employees who currently work or formerly worked for
9 Defendant (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendant has had
13 consistent policies of:

14 a. Failing to pay all wages due to Plaintiff and Aggrieved Employees, in violation
15 of Labor Code §§ 510, 558, and 1194. Defendant failed to properly blend bonus wages and other non-
16 base wages earned by Plaintiff and Aggrieved Employees into their regular rate of pay for purposes
17 of paying them overtime and double time wages and meal and rest period premiums at the correct
18 rates. Defendant instead paid Plaintiff and other Aggrieved Employees overtime wages, double-time
19 wages, and meal and rest period premium wages based only on the base hourly rate of pay, thus
20 depriving Plaintiff and other Aggrieved Employees of all overtime wages, double time wages, and
21 meal and rest period premiums earned. This violates Labor Code §§ 510, 558, and 1194.

22 b. Failing to pay premium wages to Plaintiff and Aggrieved Employees who were
23 denied proper meal periods, in violation of Labor Code §§ 226.7, 512 and IWC Wage Order 7-2001.
24 Plaintiff and Aggrieved Employees were routinely denied, and not authorized to take, a proper,
25 timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a
26 second proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten
27 hours, but were not paid premium wages of one hour’s pay for each missed first or second meal
28 period. When they were able to take a meal period, they were oftentimes late, cut short, interrupted,

1 or employees would be forced to eat while working off-the-clock, resulting in further unpaid wages.
2 This violates Labor Code §§ 226.7, 510, 512, 558 and 1194 and IWC Wage Order 7-2001.

3 c. Failing to pay premium wages to Plaintiff and Aggrieved Employees who were
4 denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 7-2001. Plaintiff
5 and Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4)
6 hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each
7 missed rest period. Plaintiff and Aggrieved Employees were simply denied rest periods altogether
8 because they were too busy to take them, and Defendant did not maintain enough staffing to allow
9 for them to be taken. This violates Labor Code § 226.7 and IWC Wage Order 7-2001.

10 d. Failing to provide Plaintiff and all other Aggrieved Employees with wage
11 statements that fully and accurately itemized the requirements set forth in Labor Code §§ 226(a) and
12 226.3. As stated above, Plaintiff and other Aggrieved Employees were not paid all overtime and
13 double-time wages due and premium meal and rest period wages due. As such, the wage statements
14 provided by Defendant failed to accurately state all gross wages earned, in violation of Labor Code
15 §§ 226(a)(1) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, total
16 hours worked, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in
17 effect during the pay period and the corresponding number of hours of worked at each rate, in
18 violation of Labor Code §§ 226(a)(9) and 226.3. Furthermore, and independent of the above
19 allegations, the wage statements issued to Plaintiff and Aggrieved Employees failed to set forth the
20 accurate total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, and all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours of worked at each
22 rate, in violation of Labor Code §§ 226(a)(9) and 226.3. The wage statements overstate the total hours
23 worked by improperly including duplicate hours worked at certain rates of pay and set forth the
24 overtime rate as only the overtime premium and not the correct applicable rate of one and one-half
25 times the regular rate of pay.

26 e. Failing to pay Plaintiff all wages due at the separation of his employment based
27 on the time frames required by Labor Code §§ 201 and 202. As stated above, Plaintiff and other
28 Aggrieved Employees were not paid all wages due during the course of their employment and, as a

1 result of this failure, they were not timely paid all wages due at the separation of their employment.
2 This violates Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and certain Aggrieved
3 Employees.

4 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
5 2698 *et seq.*, seeks civil penalties for Defendant's violations of the California Labor Code.

6 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
7 The Labor Code violations alleged against Defendant herein arose in Los Angeles County, California.

8 II.

9 PARTIES

10 A. Plaintiff

11 5. Plaintiff MICHAEL SANDERS was employed by Defendants from February 2020
12 through February 2021 as a non-exempt service consultant in Los Angeles County, California.

13 B. Defendants

14 6. Defendant KDW AUTOMOTIVE, INC. is a Delaware corporation. Defendant
15 employed Plaintiff and Aggrieved Employees throughout the State of California, including Los
16 Angeles County, California.

17 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
18 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
19 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
20 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
21 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
22 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
23 designated hereinafter as DOES when such identities become known.

24 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
25 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
26 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
27 attributable to the other Defendants.

9. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201-202, 226(a), 226.7, 510, 512, AND 1194 AND PURSUANT TO LABOR CODE §
2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201-202, 226(a), 226.7, 510, 512, and 1194; and

b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3 and 558.

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On April 8, 2021 and April 25, 2022, Plaintiff sent letters, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within

sixty-five (65) calendar days of April 8, 2021 or April 25, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

IV.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Dated: June 30, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: Daniel F. Gaines
DANIEL F. GAINES
EVAN S. GAINES
Attorneys for Plaintiff

EXHIBIT E

1 DANIEL F. GAINES, ESQ. SBN 251488

daniel@gaineslawfirm.com

2 ALEX P. KATOFISKY, ESQ. SBN 202754

alex@gaineslawfirm.com

3 SEPIDEH ARDESTANI, ESQ. SBN 274259

sepideh@gaineslawfirm.com

4 EVAN S. GAINES, ESQ. SBN 287668

evan@gaineslawfirm.com

5 **GAINES & GAINES, APLC**

27200 Agoura Rd., 4550 East Thousand Oaks Boulevard, Suite 101100

6 Calabasas Westlake Village, CA 9130191362

Telephone: (818) 703-8985

7 Facsimile: (818) 703-8984

8 Attorneys for Plaintiff Michael Sanders, on behalf of himself and all “aggrieved employees”
9 pursuant to Labor Code § 2698 *et seq.*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES**

12 MICHAEL SANDERS, on behalf of himself
13 and all “aggrieved employees” pursuant to
14 Labor Code § 2698 *et seq.*,

15 Plaintiff,

16 v.

17 KDW AUTOMOTIVE, INC., a Delaware
corporation, DOES 1 through 10, inclusive,

18 Defendants.

CASE NO: 21GDCV008857

Assigned to the Hon. David A. Rosen, Dept. E

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201-202, 226(a), 226.7, 510, 512, AND
5121194 AND PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 226.3 AND 558**

Complaint Filed: June 21, 2021

1 Plaintiff MICHAEL SANDERS (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of KDW
3 AUTOMOTIVE, INC., a Delaware corporation, and/or any subsidiaries or affiliated companies
4 (hereinafter referred to as “Defendant”), as follows:

5 ¶

6 ¶

7 ¶

8 ¶

9 I.

10 **INTRODUCTION AND FACTUAL BACKGROUND**

11 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
12 Plaintiff and other non-exempt California employees who currently work or formerly worked for
13 Defendant (“Aggrieved Employees”).

14 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
15 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
16 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendant has had
17 consistent policies of:

18 a. Failing to pay all wages due to Plaintiff and Aggrieved Employees, in violation
19 of Labor Code §§ 510, 558, and 1194. Defendant failed to properly blend bonus wages and other non-
20 base wages earned by Plaintiff and Aggrieved Employees into their regular rate of pay for purposes
21 of paying them overtime and double time wages and meal and rest period premiums at the correct
22 rates. Defendant instead paid Plaintiff and other Aggrieved Employees overtime wages, double-time
23 wages, and meal and rest period premium wages based only on the base hourly rate of pay, thus
24 depriving Plaintiff and other Aggrieved Employees of all overtime wages, double time wages, and
25 meal and rest period premiums earned. This violates Labor Code §§ 510, 558, and 1194.

26 b. Failing to pay premium wages to Plaintiff and Aggrieved Employees who were
27 denied proper meal periods, in violation of Labor Code §§ 226.7, 512 and IWC Wage Order 7-2001.
28 Plaintiff and Aggrieved Employees were routinely denied, and not authorized to take, a proper,

1 timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a
2 second proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten
3 hours, but were not paid premium wages of one hour's pay for each missed first or second meal
4 period. When they were able to take a meal period, they were oftentimes late, cut short, interrupted,
5 or employees would be forced to eat while working off-the-clock, resulting in further unpaid wages.
6 This violates Labor Code §§ 226.7, 510, 512, 558 and 1194 and IWC Wage Order 7-2001.

7 bc. Failing to pay premium wages to Plaintiff and Aggrieved Employees who were
8 denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 7-2001. Plaintiff
9 and Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4)
10 hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each
11 missed rest period. Plaintiff and Aggrieved Employees were simply denied rest periods altogether
12 because they were too busy to take them, and Defendant did not maintain enough staffing to allow
13 for them to be taken. This violates Labor Code §§ 226.7 ~~and 558~~ and IWC Wage Order 7-2001.

14 ed. Failing to provide Plaintiff and all other Aggrieved Employees with wage
15 statements that fully and accurately itemized the requirements set forth in Labor Code §§ 226(a) and
16 226.3. As stated above, Plaintiff and other Aggrieved Employees were not paid all overtime and
17 double-time wages due and premium meal and rest period wages due, ~~as stated above~~. As such, the
18 wage statements provided by Defendant failed to accurately state all gross wages earned, in violation
19 of Labor Code §§ 226(a)(1) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5)
20 and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours of worked at each
22 rate, in violation of Labor Code §§ 226(a)(9) and 226.3. IndependentFurthermore, and independent
23 of the above allegations, the wage statements issued to Plaintiff and ~~all other~~ Aggrieved Employees
24 failed to set forth the accurate total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3,
25 and all applicable hourly rates in effect during the pay period and the corresponding number of hours
26 of worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3. The wage statements
27 overstate the total hours worked by improperly including duplicate hours worked at certain rates of
28

1 pay and set forth the overtime rate as only the overtime premium and not the correct applicable rate
2 of one and one-half times the regular rate of pay.

3 de. Failing to pay Plaintiff all wages due at the separation of his employment based
4 on the time frames required by Labor Code §§ 201 and 202. As stated above, Plaintiff and other
5 Aggrieved Employees were not paid all wages due during the course of their employment and, as a
6 result of this failure, they were not timely paid all wages due at the separation of their employment.
7 This violates Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and certain Aggrieved
8 Employees.

9 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
10 2698 *et seq.*, seeks civil penalties for Defendant's violations of the California Labor Code.

11 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
12 The Labor Code violations alleged against Defendant herein arose in Los Angeles County, California.

13 II.

14 PARTIES

15 A. Plaintiff

16 5. Plaintiff MICHAEL SANDERS was employed by Defendants from February 2020
17 through February 2021 as a non-exempt service consultant in Los Angeles County, California.

18 B. Defendants

19 6. Defendant KDW AUTOMOTIVE, INC. is a Delaware corporation. Defendant
20 employed Plaintiff and Aggrieved Employees throughout the State of California, including Los
21 Angeles County, California.

22 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
23 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
24 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
25 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
26 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
27
28

1 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
2 designated hereinafter as DOES when such identities become known.

3 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
4 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
5 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
6 attributable to the other Defendants.

7 9. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
8 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
9 provisions of the California Labor Code as alleged herein.

10 III.

11 CAUSES OF ACTION

12 FIRST CAUSE OF ACTION

13 PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS 14 PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR 15 CODE §§ 201-202, 226(a), 226.7, 510, 512, AND 5121194 AND PURSUANT TO LABOR 16 CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558

17 10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set
18 forth herein.

19 11. As a result of the acts alleged above, including the Labor Code violations set forth in
20 paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

21 12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
22 penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

- 23 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
24 each subsequent violation of Labor Code §§ 201-202, 226(a), 226.7, 510, 512,
25 and 5121194; and
26 b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code
27 §§ 226.3 and 558.
28

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On April 8, 2021 and April 25, 2022, Plaintiff sent ~~a letter~~ letters, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of April 8, 2021- or April 25, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

IV.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Dated: June 6, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: _____
DANIEL F. GAINES
SEPIDEH ARDESTANI EVAN S. GAINES
Attorneys for Plaintiff

EXHIBIT F

GAINES & GAINES

A PROFESSIONAL LAW CORPORATION

WWW.GAINESLAWFIRM.COM

27200 AGOURA ROAD, SUITE 101
CALABASAS, CALIFORNIA 91301

PHONE (818) 703-8985
FAX (818) 703-8984

April 25, 2022

Via Certified Mail

Labor & Workforce Development Agency
By online submission

KDW Automotive, Inc.
1221 S. Brand Blvd.
Glendale, CA 91204

Defendant mailed certified # 7022 0410 0002 9933 6464

Agent for Service of Process for KDW Automotive, Inc.
C T Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Agent mailed certified # 7022 0410 0002 9933 6471

Re: ***Labor Code Violations of KDW Automotive, Inc. – Compliance Letter of
California Labor Code § 2698 - Private Attorneys General Act
LWDA Case No. LWDA-CM-828679-21***

Dear LWDA:

This letter supplements our previous correspondence sent on April 8, 2021 and alleges additional claims against KDW Automotive, Inc. ("Defendant").

This office represents Michael Sanders, a former non-exempt California employee of Defendant. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client was employed in Southern California. Herein, we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its non-exempt California employees ("Aggrieved Employees").

Our client alleges that Defendant failed to pay all wages due, in violation of Labor Code §§ 510, 558, and 1194. Defendant failed to properly blend bonus wages and other non-base wages earned by our client and other Aggrieved Employees into their regular rate of pay for purposes of paying them overtime and double time wages and meal and rest period premiums at the correct rates, in violation of Labor Code §§ 510, 558, and 1194. Defendant failed to properly blend bonus wages and other non-base hourly wages and instead paid our client and other Aggrieved Employees overtime and double time wages and meal and rest period premiums based only on the base hourly rate of pay, thus depriving our client and other Aggrieved Employees of all overtime and double time wages and meal and rest period premiums earned. This violates Labor Code §§ 510, 558, and 1194.

Our client alleges that Defendant failed to pay premium wages to him and Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 7-2001. Our client and Aggrieved Employees were routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first or second meal period. When they were able to take a meal period, they were oftentimes late, cut short, interrupted, or employees would be forced to eat while working off-the-clock, resulting in further unpaid wages. This violates Labor Code §§ 226.7, 510, 512, 558 and 1194 and IWC Wage Order 7-2001.

Our client also alleges that Defendant failed to pay premium wages to him and Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 7-2001. Our client and Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. Our client and Aggrieved Employees were simply denied rest periods altogether because they were too busy to take them and Defendant did not maintain enough staffing to allow for them to be taken. This violates Labor Code §§ 226.7 and 558 and IWC Wage Order 7-2001.

Our client further alleges that Defendant failed to provide him and all other Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code §§ 226(a) and 226.3. Our client and other Aggrieved Employees were not paid all wages due and premium meal and rest period wages due, as stated above. As such, the wage statements provided by Defendant failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding number of hours of worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3. Independent of the above allegations, the wage statements issued to our client and all other Aggrieved Employees failed to set forth the accurate total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding number of hours of worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3. The wage statements overstate the total hours worked by improperly including duplicate hours worked at certain rates of pay and set forth the overtime rate as only the overtime premium and not the correct applicable rate of one and one-half times the regular rate of pay.

Our client further alleges that Defendant failed to pay him all wages due at the separation of his employment based on the time frames required by Labor Code §§ 201 and 202. As stated above, our client and other Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of our client and certain Aggrieved Employees.

Labor & Workforce Development Agency
KDW Automotive, Inc.
C T Corporation System
April 25, 2022
Page 3

Very truly yours,

GAINES & GAINES
A Professional Law Corporation

By: *Evan S. Gaines*
EVAN S. GAINES

cc: John Mavros, Esq.
Bret Martin, Esq.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE AND CERTIFICATION

I am employed in the County of VENTURA, State of California. I am over the age of 18 and not a party to the within action; my business address is 4550 E. Thousand Oaks Blvd., Suite 100, Westlake Village, CA 91362.

____ (For messenger) my business address is:

On July 1, 2022, I served the foregoing document described as **(1) STIPULATION AND [PROPOSED] ORDER PERMITTING FILING OF FIRST AMENDED COMPLAINT, APPROVING SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT CLAIMS, AND DISMISSING THE ACTION WITH PREJUDICE and (2) DECLARATION OF DANIEL F. GAINES IN SUPPORT OF STIPULATION AND [PROPOSED] ORDER PERMITTING FILING OF FIRST AMENDED COMPLAINT, APPROVING SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT CLAIMS, AND DISMISSING THE ACTION WITH PREJUDICE** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

John A. Mavros, Esq.
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, CA 92614

Bret Martin, Esq.
FISHER & PHILLIPS LLP
4747 Executive Drive., Suite 1000
San Diego, CA 92121

X (BY ☒ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more that one day after date of deposit for mailing in affidavit.

____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

____ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission via email on the counsel of record listed above.

X (UPLOADED TO LWDA WEB PORTAL) I caused the above-described document to be delivered to the Labor & Workforce Development Agency via online process at the PAGA Filing website (www.dir.ca.gov) in accordance with the procedure imposed by the LWDA.

I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 1, 2022, at Westlake Village, California.

Beatriz Franco
BEATRIZ FRANCO