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GERHARDT GEAR CO, INC, a California Corporation MITCHELL GERHARDT; KURHT
GERHARDT; and CHRISTIAN GERHARDT

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Attorneys for Plaintiff,

ROMEO KESHISHYAN, an individual, and on behalf of other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – BURBANK COURTHOUSE

ROMEO KESHISHYAN, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

GERHARDT GEAR CO, INC, a California
Corporation; MITCHELL GERHARDT, an
individual; KURHT GERHARDT, an
individual; CHRISTIAN GERHARDT, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

) Case No. 21STCV32007

) Assigned to Hon. John J. Kralik, Dept. B

) **JOINT STIPULATION REQUESTING**
) **APPROVAL OF PRIVATE ATTORNEY**
) **GENERAL ACT SETTLEMENT**
) **(LABOR CODE § 2698 ET SEQ.);**
) **[PROPOSED] ORDER**

) Complaint Filed: August 27, 2021

) Trial Date: Not Yet Set

1 Pursuant to California Labor Code § 2699(1), Plaintiff ROMEO KESHISHYAN (“Plaintiff”) and
2 Defendants GERHARDT GEAR CO., INC.(“Gerhardt”); MITCHELL GERHARDT; KURHT
3 GERHARDT; and CHRISTIAN GERHARDT (collectively, “Defendants”) jointly request that this Court
4 approve the settlement of Plaintiff’s claim under the Private Attorneys General Act, Cal. Lab. Code §
5 2698 *et seq.* (“PAGA”). In support of their request, the Parties stipulate and agree, as follows:

6 PROCEDURAL BACKGROUND

7 1. Plaintiff was hired by Gerhardt on or around September 18, 2019, as an “Operator” and his
8 employment ended on October 15, 2020. On August 27, 2021, Plaintiff filed a Complaint against
9 Defendants in the Superior Court of the State of California, County of Los Angeles, Case No.
10 21STCV32007 (the “Lawsuit”) alleging the following causes of action: (1) discrimination in violation of
11 gov’t code §§12940 *et seq.*; (2) retaliation in violation of gov’t code §§12940 *et seq.*; (3) failure to
12 accommodate in violation of gov’t code §§12940 *et seq.* (4) failure to engage in the interactive process in
13 violation of gov’t code §§12940 *et seq.*; (5) wrongful termination in violation of public policy; (6)
14 retaliation in violation of Labor Code §1102.5; (7) failure to pay wages in violation of Labor Code §§201,
15 203, *et seq.* (8) failure to reimburse business expenses in violation of Labor Code §2802; (9) failure to
16 provide itemized wage and hour statements in violation of Labor Code §226; (10) unlawful deductions in
17 violation of Labor Code §§221, 222, 223, 224 *et seq.*; (11) private attorney general act (cal. labor code
18 §2698, *et seq.*) (Ghavimi Decl. ¶4). Defendants deny Plaintiff’s allegations. (Ghavimi Decl. ¶6)

19 SETTLEMENT DISCUSSIONS

20 1. The Parties were engaged in informal negotiations from approximately May 10, 2021
21 through December 7, 2021. (Ghavimi Decl. ¶7)

22 2. During the negotiations, the Parties discussed the case at length, including the relative
23 strengths and weaknesses of the Parties’ positions as well as the benefits to all parties of an early, informal
24 resolution.

25 3. On December 7, 2021, the Parties reached a settlement agreement. (Ghavimi Decl. ¶9)

26 4. The Parties’ settlement resolves all of Plaintiff’s claims including his PAGA representative
27 claim. (Ghavimi Decl. ¶10)

28 5. While the terms of the Parties’ Settlement Agreement are confidential, the Parties

1 recognize that the public's interest in ensuring the Court's proper administration of the PAGA settlement
2 approval procedure requires the disclosure of the amount of the Settlement Payment that is allocated to
3 Plaintiff's PAGA claim. As such, while maintaining the confidentiality of the remaining portions of the
4 Settlement Agreement, the parties represent that they agreed to allocate \$10,000.00 in settlement of
5 Plaintiff's PAGA claim. The relevant language from the Settlement Agreement reads as follows:

6 The Settlement Parties will be filing a "Joint Stipulation Requesting
7 Approval of Private Attorney General Act Settlement (Labor Code §2698
8 et. seq.); [Proposed] Order" setting forth the terms and conditions of the
9 Settlement of the PAGA Representative Action and Release, which
10 provides for a total of Ten Thousand United States Dollars (\$10,000.00) to
11 be paid to the PAGA Employees and the Labor Workforce and
12 Development Agency ("LWDA") for full and final settlement of the
13 PAGA claim. The \$10,000.00 will be paid by Defendant, and is in
14 addition to the consideration in section 2(a).

15 (Ghavimi Decl. ¶11)

16 **RELEVANT FACTORS WEIGH IN FAVOR OF APPROVING SETTLEMENT**

17 6. A settlement reached between the parties on a PAGA claim is subject to court review and
18 approval. Cal. Lab. Code § 2699(l). However, the statute does not set forth the factors that should be
19 considered when determining whether to approve such a settlement.

20 7. Generally, the settlement of Plaintiff's PAGA claim should be approved because it is fair,
21 adequate, and reasonable. (Ghavimi Decl. ¶ 13) *See Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D.
22 Cal. 1988) (opinion of experienced counsel is entitled to considerable weight).

23 8. In support of this conclusion, the Parties' counsel considered the following:

24 9. Factor 1: The Instant Settlement is the Result of Extensive Negotiations.

25 a. A settlement agreement that is the "product of extensive and hard-fought
26 adversarial negotiations between the parties" is entitled to a presumption of fairness. *Wershba v. Apple*
27 *Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

28 b. In this case, each of the Parties involved were zealously represented by competent
 legal counsel who have a combined total of more than 45 years of legal experience and have represented
 clients in numerous wage-and-hour disputes. (Ghavimi Decl. ¶14)

1 c. Each party diligently and independently investigated the merits of Plaintiff's
2 claims. (Ghavimi Decl. ¶¶15 - 19) Over the course of months of negotiations, Gerhardt produced hundreds
3 of pages of documents pertaining to its wage-and-hour policies and practices, as well as pertaining to
4 Plaintiff's employment with Gerhardt. Further, the Parties discussed at length the merits of Plaintiff's
5 contemplated wage-and-hour claims, including in-depth discussions of: whether Plaintiff and PAGA
6 employees were entitled to any unpaid wages; Gerhardt's valid and enforceable alternative workweek
7 schedule which was registered and approved by the Department of Industrial Relations, whether
8 Defendant's meal period policy and procedure were compliant, whether Plaintiff and PAGA employees
9 were properly reimbursed for all expenses. The Parties agree that the merits of Plaintiff's wage-and-hour
10 claims are questionable based on the documents and evidence produced in this litigation, and the Parties
11 are resolving Plaintiff's PAGA claim as set forth herein to avoid the ongoing costs of litigation.

12 d. The Parties engaged in significant negotiations over a span of approximately 7
13 months in an adversarial position. (Ghavimi Decl. ¶18).

14 e. Based on these circumstances, the instant PAGA settlement is presumptively fair.

15 10. Factor 2: Risk of Additional Litigation. Counsel for each party also considered the fact
16 that the existence of numerous disputes of fact in this case made summary judgment unlikely for all parties.
17 As such, resolving the instant PAGA claim would require extensive litigation. In the estimation of each
18 party's counsel, the delay, inconvenience, distraction, and uncertainty imposed by these litigation
19 demands would far outweigh the potential benefits of additional litigation. Specifically, Plaintiff would
20 have needed to take the depositions of each of the potentially PAGA workers who worked at Gerhardt
21 during the relevant time period, as well as the depositions of the various managers and supervisors at the
22 location where the "aggrieved employees" worked.

23 11. Factor 3: Amount of PAGA Settlement.

24 12. The amount of the PAGA settlement is sufficient to serve the policy rationale underlying
25 PAGA. Indeed, the settlement amount is comparable (if not more generous than) PAGA settlements
26 involving much larger groups of allegedly aggrieved employees. For example, in *Schiller v. David's*
27 *Bridal, Inc.*, 1:10-cv-00616-AWI-SKO, 2012 U.S. Dist. LEXIS 80776 (E.D. Cal. June 11, 2012), the
28 Court approved a \$10,000 PAGA settlement in a case involving 3,327 class members. Similarly, in *Chu*

1 v. *Wells Fargo Investments, LLC*, No. C-05-4526 MHP, 2011 U.S. Dist. LEXIS 15821 (N.D. Cal. Feb.
2 16, 2011), the Court approved a \$10,000 PAGA settlement in a case involving 2,752 class members. As
3 such, because the instant settlement allocates \$10,000.00 for approximately 55 potentially aggrieved
4 PAGA workers, the amount of the settlement is reasonable.

5 13. Factor 4: Defendant's Arguments. Counsel for Plaintiff and the allegedly aggrieved
6 employees also had to consider the various arguments advanced by Gerhardt in order to evaluate the
7 appropriate settlement value of Plaintiff's PAGA claim:

8 a. Gerhardt maintains that Plaintiff cannot maintain a PAGA claim because there is
9 no evidence of a common policy or practice that prevented, inhibited, or discouraged employees from
10 taking their statutory meal and rest breaks. *See, e.g., Amey v. Cinemark USA, Inc.*, No. 13-05669, 2015
11 U.S. Dist. LEXIS 63524 (N.D. Cal. May 13, 2015) (striking PAGA claim because the evidence showed
12 that numerous individualized determinations would be necessary to determine whether any class member
13 has been injured); *Ortiz v. CVS Caremark Corp.*, No. C-12-05859 EDL, 2014 U.S. Dist. LEXIS 36833
14 (N.D. Cal. Mar. 19, 2014); *Litty v. Merrill Lynch & Co., Inc.*, No. CV-14-0425 PA (PJWx), 2014 U.S.
15 Dist. LEXIS 160448 (C.D. Cal. Nov. 10, 2014), *Bowers v. First Student, Inc.*, No. 2-14-cv-8866 ODW
16 (Ex), 2015 U.S. Dist. LEXIS 54238 (C.D. Cal. April 23, 2015); *Raphael v. Tesoro Ref. & Mktg. Co. LLC*,
17 No. 2:15-CV-02862-ODW, 2015 U.S. Dist. LEXIS 130532 (C.D. Cal. Sept. 25, 2015). As to meal
18 periods, employees such as Plaintiff took their 30-minute meal period at the same time, which was
19 indicated by a bell at the start and end of the meal period. This practice is compliant under the applicable
20 Wage Order which states "Meal periods during which operations cease and authorized rest periods need
21 not be recorded." As to allegedly unpaid wages, Gerhardt had a valid and enforceable alternative
22 workweek that was approved and registered with the Department of Industrial Relations.

23 b. Plaintiff's Counsel also took into account that even if Plaintiff prevailed on the
24 merits of her PAGA claim, Defendants could persuasively argue that the Court should exercise its
25 discretion, under Labor Code § 2699(e), to reduce the amount of civil penalties assessed. A Court in a
26 PAGA action has the same discretion "to assess a civil penalty" that the Labor Commissioner would have,
27 as well as complete discretion to "award a lesser amount than the maximum civil penalty amount specified
28 [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in

1 an award that is unjust, arbitrary and oppressive, or confiscatory.”

2 c. While Plaintiff’s Counsel disagrees that Defendant’s arguments are legally correct
3 or persuasive, they had to consider the foregoing facts and arguments and how they might impact any
4 judgment ultimately awarded if the Court were persuaded by them. In light of these arguments and the
5 potential risks, Plaintiff’s Counsel determined that the Settlement was fair and reasonable. (Ghavimi Decl.
6 ¶ 19.)

7 14. Nothing in this Stipulation shall be deemed an admission of liability, culpability, or
8 wrongdoing on the part of either Defendants.

9 THE PARTIES THEREFORE stipulate and jointly request that, pursuant to California Labor
10 Code §2699(l), the Court approve the following terms of the instant settlement of Plaintiff’s PAGA claim:

- 11 1. That a total of \$10,000.00 be allocated to the settlement of Plaintiff’s PAGA claim, of
12 which \$2,500.00 shall be allocated as Plaintiff’s attorneys’ fees and \$1,245.95 shall be
13 allocated as Plaintiff’s attorneys’ costs (Ghavimi Decl., ¶ 20); \$4,690.54 shall be paid
14 to the LWDA and \$1,563.51 will be paid to the “PAGA Settling Workers” to be
15 distributed evenly among them; and
16 2. That the term “PAGA Settling Worker” includes all hourly, non-exempt employees
17 who worked for Gerhardt during the period of June 4, 2020 through the Effective Date
18 of the Parties’ Agreement.

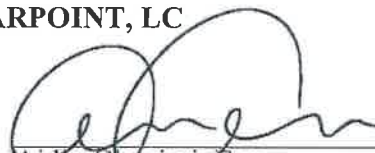
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DATED: January 6, 2022

Respectfully submitted,

STARPOINT, LC

By:

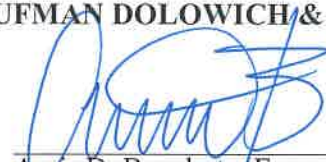

Aidin Ghavimi, Esq.
Attorneys for Plaintiff,
ROMEO KESHISHYAN

February 2
DATED: January __, 2022

Respectfully submitted,

KAUFMAN DOLOWICH & VOLUCK, LLP

By:


Amir D. Benakote, Esq.
Attorneys for Defendants,
GERHARDT GEAR CO, INC.; MITCHELL
GERHARDT; KURHT GERHARDT;
and CHRISTIAN GERHARDT

DECLARATION OF AIDIN GHAVIMI

I, Aidin Ghavimi, hereby declare as follows:

1. I am over eighteen years of age. I have personal knowledge of each of the matters set forth below, or have gained such knowledge from my review of the files of this case, and, if called as a witness, could and would competently testify to each of them under oath.

2. I am an attorney at STARPOINT LC, counsel of record for Plaintiff ROMEO KESHISHYAN ("Plaintiff") in the above-referenced lawsuit.

3. This declaration is being submitted in support of the Joint Stipulation Requesting Approval of Private Attorney General Act Settlement (Labor Code §2698 *et seq.*).

4. On August 27, 2021, Plaintiff filed a Complaint against Defendants in the Superior Court of the State of California, County of Los Angeles, Case No. 21STCV32007 (the "Lawsuit") alleging the following causes of action: (1) discrimination in violation of gov't code §§12940 *et seq.*; (2) retaliation in violation of gov't code §§12940 *et seq.*; (3) failure to accommodate in violation of gov't code §§12940 *et seq.* (4) failure to engage in the interactive process in violation of gov't code §§12940 *et seq.*; (5) wrongful termination in violation of public policy; (6) retaliation in violation of Labor Code §1102.5; (7) failure to pay wages in violation of Labor Code §§201, 203, *et seq.* (8) failure to reimburse business expenses in violation of Labor Code §2802; (9) failure to provide itemized wage and hour statements in violation of Labor Code §226; (10) unlawful deductions in violation of Labor Code §§221, 222, 223, 224 *et seq.*; (11) private attorney general act (cal. labor code §2698, *et seq.*).

5. Each of Plaintiff's wage-and-hour causes of action stem from the allegation that Defendant denied Plaintiff and his co-worker's statutory meal and rest periods; failed to pay wages due; and failed to reimburse expenses. Specifically, Plaintiff alleges Gerhardt had a rounding policy which led to unpaid wages, that Gerhardt's meal period policy and procedure was non-compliant, and there were expenses incurred in the course of employment that Gerhardt failed to reimburse.

6. Defendants categorically deny Plaintiff's allegations.

7. The Parties were engaged in informal negotiations from approximately May 10, 2021 through December 7, 2021.

1 8. During the negotiations, the Parties discussed the case at length, including the relative
2 strengths and weaknesses of the Parties' positions as well as the benefits to all parties of an early,
3 informal resolution.

4 9. On December 7, 2021, the Parties reached a settlement agreement.

5 10. The Parties' settlement resolves all of Plaintiff's claims including his PAGA
6 representative claim.

7 11. While the terms of the Parties' Settlement Agreement are confidential, the Parties
8 recognize that the public's interest in ensuring the Court's proper administration of the PAGA settlement
9 approval procedure requires the disclosure of the amount of the Settlement Payment that is allocated to
10 Plaintiff's PAGA claim. As such, while maintaining the confidentiality of the remaining portions of the
11 Settlement Agreement, the parties represent that they agreed to allocate \$10,000.00 in settlement of
12 Plaintiff's PAGA claim. The relevant language from the Settlement Agreement reads as follows:

13 The Settlement Parties will be filing a "Joint Stipulation Requesting
14 Approval of Private Attorney General Act Settlement (Labor Code §2698
15 et. seq.); [Proposed] Order" setting forth the terms and conditions of the
16 Settlement of the PAGA Representative Action and Release, which
17 provides for a total of Five Thousand United States Dollars (\$10,000.00)
18 to be paid to the PAGA Employees and the Labor Workforce and
19 Development Agency ("LWDA") for full and final settlement of the
20 PAGA claim. The \$10,000.00 will be paid by Defendant, and is in
21 addition to the consideration in section 2(a).

22 12. It is believed that there may be approximately 55 employees who worked for Defendant
23 during the period of June 4, 2020, through the Effective Date and could be qualified PAGA Settling
24 Workers.

25 13. The settlement of Plaintiff's PAGA claim should be approved because it is fair, adequate,
26 and reasonable.

27 14. The Parties involved in this action were zealously represented by competent legal counsel
28 and have represented clients in numerous wage-and-hour disputes. Specifically, Aidin Ghavimi and John
Vafa, counsel for Plaintiff became members of the California State Bar in December 2015 and have
actively and continuously practiced law since. Julie M. Weber, lead counsel for Defendants, became a

1 member of the California State Bar in December of 1988 and has actively and continuously practiced
2 law since. Amir David Benakote, counsel for Defendants, became a member of the California State Bar
3 in June 2011 and has actively and continuously practiced law since.

4 15. During the course of this litigation, each party diligently and independently investigated
5 the merits of Plaintiff's claims.

6 16. Over the course of months of negotiations, Gerhardt produced hundreds of documents
7 pertaining to its wage-and-hour policies and practices, as well as pertaining to Plaintiff's employment
8 with Gerhardt. Further, the Parties discussed at length the merits of Plaintiff's contemplated wage-and-
9 hour claims, including in-depth discussions of: whether Plaintiff and PAGA employees were entitled to
10 any unpaid wages; Gerhardt's valid and enforceable alternative workweek schedule which was
11 registered and approved by the Department of Industrial Relations, whether Defendant's meal period
12 policy and procedure were compliant, whether Plaintiff and PAGA employees were properly reimbursed
13 for all expenses. The Parties agree that the merits of Plaintiff's wage-and-hour claims are questionable
14 based on the documents and evidence produced in this litigation, and the Parties are resolving Plaintiff's
15 PAGA claim as set forth herein to avoid the ongoing costs of litigation.
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17 17. I personally spent numerous hours reviewing and analyzing Plaintiff's pay and time
18 records, as well.

19 18. The Parties engaged in significant negotiations over a span of approximately 7 months in
20 an adversarial position.

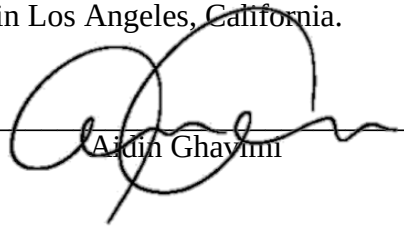
21 19. In determining that the instant settlement was reasonable, I considered my review of the
22 personnel file produced by Defendant, the various arguments Defendant maintained in the course of this
23 lawsuit. In light of these arguments and the potential risks, Plaintiff's Counsel determined that the
24 Settlement was fair and reasonable.

25 20. My firm represents Plaintiffs on a contingency basis. My retained rate is 36% of the gross
26 settlement. I agree to reduce the fee amount for purposes of the PAGA settlement to 25%, which
27 amounts to \$2,500.00. My firm's costs associated with the representation are approximately \$1,245.95.
28

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1 I declare under penalty of perjury under the laws of the United States of America and the State of
2 California that the foregoing is true and correct.

3
4 Executed this 6 day of January 2022, in Los Angeles, California.

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7 Aidin Ghayimi
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1 **[PROPOSED] ORDER**

2 Based upon the foregoing Stipulation between the parties, IT IS HEREBY ORDERED that the Court
3 approves the following terms of the instant settlement of Plaintiff's PAGA claim:

4 1. That a total of \$10,000.00 be allocated to the settlement of Plaintiff's PAGA claim,
5 of which \$2,500.00 shall be allocated as Plaintiff's attorneys' fees and \$1,245.95 shall be
6 allocated as Plaintiff's attorneys' costs; \$4,690.54 shall be paid to the LWDA and
7 \$1,563.51 will be paid to the "PAGA Settling Workers" to be distributed evenly among
8 them; and

9 2. That the term "PAGA Settling Worker" includes workers who worked for Defendants
10 during the period of June 4, 2020 through the Effective Date of the Parties' Agreement.
11

12
13 **IT IS SO ORDERED.**

14
15 DATED: _____

16 _____
17 THE HONORABLE JOHN J. KRALIK
18 JUDGE OF THE SUPERIOR COURT
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