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7  
8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SACRAMENTO**

10 DARWIN VASQUEZ, individually and on  
11 behalf of all aggrieved employees,

12 Plaintiff,

13 v.

14 ANTON DEVCO, INC., a California  
15 Corporation; and DOES 1 to 100,

16 Defendants.  
17

Case No. 34-2021-00310326

**DECLARATION OF ADAM ROSE IN  
SUPPORT OF MOTION TO APPROVE  
PAGA SETTLEMENT**

Date: March 8, 2024

Time: 9:00 a.m.

Dept: 22

18  
19 I, Adam Rose, declare the following:

- 20 1. I am one of the attorneys for the plaintiff. I have personal knowledge of the facts in this  
21 declaration and if called on to testify about the facts I would competently do so.
- 22 2. Attached as Exhibit 1 is a true and correct copy of the signed PAGA settlement agreement.
- 23 3. I am uploading this declaration and the accompanying motion to the LWDA website at the  
24 same time as filing the motion to approve the settlement.
- 25 4. After the arbitration of Plaintiff's individual claims concluded, the parties agreed to attend  
26 mediation for the PAGA claims.
- 27 5. To prepare for the mediation, Frontier Law Center requested the following informal data: 1)  
28 An updated total number of aggrieved employees, 2) An updated total number of pay periods, 3)

1 Updated meal and rest break policies, 4) Updated time rounding policies, 5) Updated expense  
2 reimbursement policies, and 6) An update to the data provided in discovery circa March of 2022  
3 that is current through at least the end of October 2023.

4 6. Anton Devco, Inc. then provided the following: a list of the aggrieved employees and their  
5 titles and date ranges, a compendium of their workweeks, a master timecard spreadsheet, and the  
6 employee handbook; it also provided discovery responses and produced a significant amount of  
7 documents before its arbitration motion was granted, this information was also used.

8 7. This data was sufficient for Plaintiff's expert to develop a damages model for mediation.

9 8. During mediation, the strengths and risks of the damages model and theories of the case  
10 were discussed.

11 9. As explained more thoroughly in the motion to approve the PAGA settlement, considering  
12 the strengths and risks, I believe the settlement is within the range of reasonableness.

13 10. The Labor and Workforce Development Agency will receive \$79,125, and the average  
14 payment to the 185 aggrieved employees is \$142.57.

15 11. Phoenix Class Action Settlement Solutions has agreed to administer the settlement for  
16 \$4,000.

17 12. Attached as Exhibit 2 is a true and correct copy of the costs Frontier Law Center has  
18 incurred; with supplemental filings including this motion, the maximum amount will be \$10,500.

19 13. Attached as Exhibit 3 is a true and correct copy of the proposed notice to aggrieved  
20 employees that will accompany their checks.

21 14. I am also uploading a copy of this declaration with the settlement agreement and  
22 accompanying motion to the LWDA website at the same time as filing the motion.

23 15. Thus, based on the above and the arguments in the motion, I respectfully request the court to  
24 grant the motion to approve the PAGA settlement.

25  
26 I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
27 and correct.

28 Date: January 18, 2024

Adam Rose

# **Exhibit 1**

## PAGA SETTLEMENT AGREEMENT<sup>i</sup>

This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Darwin Vasquez (“Plaintiff”) and Defendant Anton Devco, Inc. (“ADI” and/or “Defendant”). The Agreement refers to Plaintiff and ADI collectively as “Parties,” or individually as “Party.”

### 1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against ADI captioned *Darwin Vasquez v. Anton Devco, Inc.* initiated on October 28, 2021 and pending in Superior Court of the State of California, County of Sacramento, case number 34-2021-0031326.
- 1.2 “Administrator” means Phoenix Class Action Settlement Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4 “Aggrieved Employee” means a person employed by ADI in California and classified as a non-exempt who worked for ADI during the PAGA Period.
- 1.5 “Aggrieved Employee Data” means Aggrieved Employee identifying information in ADI’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number and number of PAGA Pay Periods.
- 1.6 “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces and direct contact by the Administrator with Aggrieved Employees.
- 1.7 “Court” means the Superior Court of California, County of Sacramento.
- 1.8 “Defense Counsel” means Palmer Kazanjian Wohl Hodson LLP.
- 1.9 “Defendant” and/or “ADI” means Anton Devco, Inc.
- 1.10 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment or (b) when the final Order is signed by the Judge.

- 1.11 “Gross Settlement Amount” or “GSA” means \$195,000 which is the total amount ADI agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA Service Enhancement Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment and the Administrator’s Expenses Payment.
- 1.12 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.13 “Judgment” means the settlement entered by the Court based upon the Court’s Approval.
- 1.14 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).
- 1.15 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).
- 1.16 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Service Enhancement, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.17 “PAGA Counsel” means Frontier Law Center, the attorneys representing the Plaintiff in the Action.
- 1.18 “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.19 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for ADI for at least one day during the PAGA Period.
- 1.20 “PAGA Period” means the period from July 26, 2020 to February 10, 2024.
- 1.21 “PAGA” means the Private Attorneys General Act (Lab. Code, § 2698. et seq.).
- 1.22 “PAGA Notice” means Plaintiff’s July 26, 2021 letter to ADI and the LWDA providing notice pursuant to Labor Code section 2699.3, subdivision (a).
- 1.23 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Net Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.
- 1.24 “Plaintiff” means Darwin Vasquez, the named plaintiff in the Action.

- 1.25 “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.26 “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.27 “Released Parties” means ADI and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, and assigns.
- 1.28 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.29 “ADI” means named Defendant Anton Devco, Inc.

## **2. RECITALS.**

- 2.1 On July 26, 2021, Plaintiff filed a PAGA Notice with the LWDA, alleging various violations of the Labor Code by Defendant. On October 28, 2021, Plaintiff commenced this Action by filing his Complaint in Sacramento Superior Court, Case No. 34-2021-00310326 (the “Action”) alleging a PAGA cause of action against ADI for Penalties based on time rounding, and noncompliant meal and rest break policies (the “Operative Complaint”).
- 2.2 ADI denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.3 Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice to ADI and the LWDA by sending the PAGA Notice.
- 2.4 Prior to mediation, Plaintiff obtained, through formal and informal discovery, a sampling of aggrieved employee’s time clock and pay data, Plaintiff’s personnel file, and copies of ADI’s relevant written policies.
- 2.5 On December 12, 2023, the Parties participated in an all-day mediation presided over by Jason Marsili which led to this Agreement to settle the Action.
- 2.6 The Parties desire to compromise, settle, and release all claims at issue in the Action, as well as all claims arising out of and related to Plaintiff’s employment with Defendant, and any and all other claims, whether known or unknown, arising out of or based on any fact, matter or event which occurred prior to the date of this Agreement.
- 2.7 The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

### 3. CONSIDERATION.

- 3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, ADI promises to pay \$195,000 and no more as the Gross Settlement Amount. ADI has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to ADI.
- 3.2 Timing: Defendants agree that the payment described in section 2 above shall be issued no later than thirty (30) days after approval of the PAGA settlement referenced herein and upon receipt of the fully-executed Agreement and all tax forms necessary to issue the payments described herein, including a form W-9 from Plaintiff and Frontier Law. Plaintiff agrees that the Consideration described herein compensates him for all economic damages, including penalties and interest, personal injuries, injuries to reputation, and emotional pain and suffering allegedly caused by Defendant's conduct, and for any reasonable attorneys' fees.
- 3.3 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
- 3.3.1 To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33%, which is to be \$65,000.00, and PAGA Counsel Litigation Expenses Payment of not more than \$10,500.00. ADI will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds ADI harmless, and indemnifies ADI, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.3.2 To the Administrator: An Administrator Expenses Payment not to exceed \$4,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$4,000.00, the Administrator will retain the remainder in the Net Settlement

Amount.

3.3.3 To the Plaintiff: \$10,000 as a service enhancement.

3.3.4 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$105,500.00 to be paid from the Net Settlement Amount, with 75% (\$79,125.00) allocated to the LWDA PAGA Payment and 25% (\$26,375.00) allocated to the Individual PAGA Payments.

3.3.4.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$26,375.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.3.4.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will reallocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

#### **4. SETTLEMENT FUNDING AND PAYMENTS.**

4.1 Aggrieved Employee Pay Periods. Based on a review of its records to date, ADI estimates there are 185 Aggrieved Employees who worked a total of 5,168 PAGA Pay Periods.

4.2 Aggrieved Employee Data. Within 15 days, ADI will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. ADI has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which ADI must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3 Funding of Gross Settlement Amount. ADI shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after service of the Approval Order.

4.4 Payments from the Gross Settlement Amount. Within 14 days after ADI funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1 The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3 For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4 The payment of Individual PAGA Payments shall not obligate ADI to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

**5. RELEASES OF CLAIMS.** Effective on the date when ADI fully funds the entire Gross Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his, her or their respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences that occurred during the PAGA Period, including, but not limited to: all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release").

5.1.1 Plaintiff's Release does not extend to any claims or actions to enforce this

Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.2 Without limiting the generality of the foregoing and subject to the limited exclusions set forth herein, Plaintiff releases any claims and disputes arising out of any California, municipal or federal statute, ordinance, regulation, order or common law, including without limitation: claims for wrongful termination based on public policy, claims for discrimination, retaliation, or harassment, including failure to accommodate and failure to engage in the interactive process, claims under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the California Fair Employment and Housing Act; claims under the Older Workers' Benefit Protection Act, the state and federal Workers' Adjustment and Retraining Notification Act; claims under the Family Medical Leave Act and California Family Rights Act; and any and all other claims whatsoever based on contract, quasi-contract, implied contract or tort, including without limitation, defamation, libel, slander, invasion of privacy, interference with business opportunity or with contract, or infliction of emotional distress; claims for breach of the implied covenant of good faith and fair dealing, conspiracy, negligence or negligent misrepresentation, arising at any point from the beginning of time through the end of the PAGA Period. This Agreement does not, however, extend to claims which cannot, as a matter of law, be waived; provided, however, that Plaintiff expressly represents and warrants that as of the date of execution, no such claims exist based on the facts known or that could have been known to Plaintiff through the exercise of reasonable diligence.

5.1.3 The Parties intend and specifically agree that Plaintiff's PAGA claims for alleged violations of Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 256, 510, 512, 514, 1174, 1194, 1197, 1197.1, 2802, and 2698, and Bus. & Prof. Code section 17200 and any and all claims that arise or could arise from the allegations and causes of action in Plaintiff's PAGA Letter to the LWDA are not encompassed by and instead are specifically excluded from this release of claims with the express understanding and agreement that Plaintiff shall only pursue those claims in connection with the pending PAGA action. This individual settlement agreement is intended only to settle Plaintiff's retaliation and individual wage and hour claims.

5.1.4 Plaintiff expressly waives and relinquishes any rights and benefits pursuant to California Civil Code Section 1542 or any similar law from another jurisdiction with respect to the Released Claims herein, and does so understanding and acknowledging the significance and consequence of such specific waiver of Section 1542 that reads:

**SECTION 1542. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**

THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff expressly accepts and assumes the risk that additional or different facts or claims may be discovered after execution of this Agreement, and Plaintiff agrees that this Agreement shall remain effective notwithstanding such discovery.

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

5.3 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

**6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

- 6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code section 2699, subdivision (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Lab. Code, §2699, subd. (1)(1)), this Agreement (Lab. Code, § 2699, subd. (1)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 30 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Approval to the Administrator.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

## **7. SETTLEMENT ADMINISTRATION.**

- 7.1 Selection of Administrator. The Parties have jointly selected Phoenix Class Action Settlement Solutions ("Phoenix" or "Administrator") to serve as the Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

## **8. AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR CLAUSE**

Based on its records, ADI estimates that, as of the date of this Settlement Agreement, there are 185 Aggrieved Employees who worked 5,618 Pay Periods during the PAGA Period.

- 8.1 Settlement Distribution to PAGA Members. PAGA member settlement shares will be

calculated pro rata based on the pay periods per PAGA member during the PAGA period.

8.2 Pro Rata Increase. If the number of employees exceeds 185 or the number of pay periods exceeds 5,168 by more than 10%, the GSA will increase pro rata per additional PAGA member or additional pay period, whichever is greater. If it is determined that the number of pay periods through PAGA Period exceeds ten percent (10%) or more of 5,168 then at Defendant's option, either the: (a) Gross Settlement Amount shall increase pro rata per additional PAGA member or additional pay period, whichever is greater; or (b) PAGA Period shall end as of the date the pay periods within the PAGA Period reach 5,168 pay periods.

Whichever election ADI selects, the Parties agree to cooperate in the drafting and filing of any motions or other papers necessary to amend the judgment to reflect either the new Gross Settlement Amount or end of PAGA Period as appropriate.

9. **CONTINUING JURISDICTION OF THE COURT**. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters and (iii) addressing such post-Judgment matters as are permitted by law.

- 9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

## 10. ADDITIONAL PROVISIONS.

- 10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by ADI that any of the allegations in the Operative Complaint have merit or that ADI has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that ADI's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If for any reason the Court does not approve this Settlement, ADI reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest ADI's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants or inducements made to or by any Party.
- 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and ADI, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action or right released and discharged by the Party in this Settlement.
- 10.6 No Other Claims or Lawsuits. Plaintiff represents that, as of the date of this agreement and excluding the PAGA Action currently pending, Plaintiff has not filed any complaint, charge, claim or lawsuit against Defendant or any of the Releasees other than this litigation. Plaintiff agrees that he will not file or seek to be added to any other complaint, charge, claim or lawsuit against any of the Releasees at any time hereafter for any act or event occurring prior to the execution of this Agreement. Plaintiff agrees that if he joins in or in any fashion seeks relief through any complaint, charge, claim or lawsuit against Defendant or any of the Releasees, he will pay to Defendant and/or the Releasees, in addition to any other damages caused thereby, all reasonable attorneys' fees and costs incurred by Defendant and/or the Releasees in defending against such complaint, charge, claim or lawsuit. Plaintiff acknowledges that upon resolution of the instant action, he will have been paid all wages and compensation owed by Defendant and/or the Releasees and that he is not entitled to any payment or benefits from Defendants or Releasees other than those expressly set forth herein (and specifically excluding those alleged in the Action). Plaintiff also represents and warrants that he has at no time suffered any injuries that could potentially be the subject of a future workers' compensation claim against Defendant or Releasees, and that he is currently aware of no other potential claims against Defendant, including claims that cannot be

released.

- 10.7 No Tax Advice. Neither Plaintiff, PAGA Counsel, ADI nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.8 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.9 Severability. If any term or provision of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.
- 10.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.13 Confidentiality. To the extent permitted by law, all agreements made and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.13.1 Plaintiff hereby states, represents, warrants, and agrees that the terms and conditions of this Agreement and each and every document and communication regarding this Agreement, including, but not limited to, the fact of and the amount of the payment required herein, are to be kept as confidential as possible given the public nature of PAGA actions. Plaintiff agrees that he will not seek nor promote publicity nor cooperate in any efforts to promote or publicize any of the terms or conditions of this Agreement, including, but not limited to, the fact of and the amount of any of the payments required herein. This provision does not affect the statutory requirement to attach a copy of the signed Agreement to the motion to approve the settlement and to upload the Agreement to the LWDA website.
- 10.13.2 Plaintiff further agrees that, except as provided in this paragraph, he will

not: communicate, discuss, disclose, disseminate, or publish the amount of the payment made by Defendant, or (2) communicate, discuss, disclose, disseminate, or publish the fact that Plaintiff has received a payment in any amount from Defendant as a result of this Agreement. Upon inquiry, Plaintiff shall respond in substance by stating only that “this matter has been resolved.” Plaintiff expressly agrees that he has received full and fair consideration for the promises made in this Agreement. Notwithstanding the foregoing, Plaintiff may communicate the terms of this Agreement if compelled by subpoena or as otherwise required by law. Plaintiff may also communicate the terms of this Agreement to his spouse, legal counsel, tax advisors and accountants, provided that Plaintiff first advise them of the confidentiality provisions of this Agreement and secures their agreement not to communicate, discuss, disclose, disseminate, or publish the terms and conditions of this Agreement. Notwithstanding the above, Plaintiff may file any papers as required for the approval of this settlement with the Court, including a copy of this Agreement, without filing under seal. Further, the Parties agree that a copy of this agreement and other supporting papers, as well as information about the terms of and amounts of the settlement will be provided to the LWDA as required by law. The Parties agree that Plaintiff has no control over how the LWDA uses this information, and shall bear no liability to Releasees whatsoever, either under section 10.15 of this Agreement or otherwise allowed by law, for any disclosures made by the LWDA that would be prohibited if made by Plaintiff.

10.14 Non-Disparagement. Plaintiff further represents that he will not, either orally or in writing, make defamatory, maliciously false, or disparaging remarks, comments or statements concerning Defendant, the Releasees, or any of their employees, officers, or directors. However, this Section does not in any way restrict or impede Plaintiff from exercising protected rights, to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by law, regulation or order. Nothing in this Agreement prevents Plaintiff from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that he has reason to believe is unlawful.

10.15 Liquidated Damages. The Parties agree that the damages flowing from a breach of the Confidentiality and/ or Non-Disparagement provisions would be difficult to ascertain, but that two thousand dollars (\$2,000) represents a reasonable estimate of the damages that would result to Defendant as a proximate result of a breach of this provision. Accordingly, the Parties agree that should Plaintiff breach this Confidentiality and/ or Non-Disparagement provisions, Defendant will be entitled to recover two thousand dollars (\$2,000.00) for each provable breach as liquidated damages.

10.16 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by ADI in connection with the mediation,

other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute or California Rules of Court rule. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from ADI unless, prior to the Administrator's payment of all Settlement Funds, ADI makes a written request to PAGA Counsel for the return, rather than the destruction, of Aggrieved Employee Data.

10.17 Attorneys' Fees and Costs. Nothing in this Agreement, nor the existence of this Agreement, shall be interpreted to render Plaintiff the prevailing party for any purpose, including, but not limited to, an award of attorneys' fees and costs. The parties agree that each party shall bear its/her own attorneys' fees and costs except as otherwise provided in this agreement, including but not limited to section 3.3.1.

10.18 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

10.19 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

10.20 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:  
Darwin Vasquez  
c/o FRONTIER LAW CENTER  
23901 Calabasas Road Suite 1084  
Calabasas CA 91302

To ADI:  
c/o Palmer Kazanjian Wohl Hodson LLP  
2277 Fair Oaks Blvd., Suite 455  
Sacramento, California 95825

10.21 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will

be admissible in evidence to prove the existence and contents of this Agreement.

10.22 Voluntary Execution. This Agreement is executed voluntarily by each party without duress or influence on the part of any other party or third person.

10.23 Choice of Law. This Agreement shall be construed in accordance with the laws of the State of California.

10.24 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of this settlement process.

PLAINTIFF AFFIRMS THAT HE IS IN GOOD HEALTH AND FULLY COMPETENT TO MANAGE HIS BUSINESS AFFAIRS AND THAT HE IS SIGNING THIS AGREEMENT KNOWINGLY AND VOLUNTARILY; HE FULLY UNDERSTANDS THE FINAL EFFECT OF THIS AGREEMENT.

|        |                       |                                                                                      |       |                 |
|--------|-----------------------|--------------------------------------------------------------------------------------|-------|-----------------|
| _____  | For Plaintiff         |   | _____ | For ADI         |
| _____  |                       | Tara Lucas, CFO                                                                      | _____ |                 |
| (date) |                       | January 6, 2024                                                                      | _____ |                 |
|        |                       | (date)                                                                               |       |                 |
| _____  | Counsel For Plaintiff |  | _____ | Counsel For ADI |
| _____  |                       | Hallie Spaulding                                                                     | _____ |                 |
| (date) |                       | January 8, 2024                                                                      | _____ |                 |
|        |                       | (date)                                                                               |       |                 |

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DocuSigned by:



D0C6C41CECC14D4...  
Darwin Vasquez

For Plaintiff

01/05/24 | 12:58 PST

(date)

For ADI

(date)

DocuSigned by:



1604F84882B60409...  
Adam Rose

Counsel For Plaintiff

1/5/2024

(date)

Counsel For ADI

(date)

# **Exhibit 2**

Expenses

for Darwin Vasquez - Employment Claim - Anton Devco, Inc. - PAGA Case

Expense entries

| Date               | Activity | Description                                   | Staff           | Quantity | Price      | Billable ? | Write Off? | Status | Total      |
|--------------------|----------|-----------------------------------------------|-----------------|----------|------------|------------|------------|--------|------------|
| 1/12/2024          |          | One Legal Credit Card Sale_05641802           | Taylor McCarthy | 1        | \$92.66    | True       | No         | -      | \$92.66    |
| 12/8/2023          |          | JT Calos Inv. No. 231208                      | Kirsten Starr   | 1        | \$1,350.00 | True       | No         | -      | \$1,350.00 |
| 11/30/2023         |          | Mediation Cost2 Inv. No. 110199               | Taylor McCarthy | 1        | \$3,000.00 | True       | No         | -      | \$3,000.00 |
| 11/28/2023         |          | One Legal Credit Card Sale_05525565           | Taylor McCarthy | 1        | \$92.66    | True       | No         | -      | \$92.66    |
| 11/2/2023          |          | Mediation Check Inv. No. 110199               | Taylor McCarthy | 1        | \$3,000.00 | True       | No         | -      | \$3,000.00 |
| 9/14/2023          |          | One Legal CC Sale: 05315561                   | Yasmin Ruiz     | 1        | \$92.66    | True       | No         | -      | \$92.66    |
| 7/27/2023          |          | One Legal CC Sale: 05179507                   | Yasmin Ruiz     | 1        | \$113.25   | True       | No         | -      | \$113.25   |
| 2/28/2023          |          | Verdict Resources Invoice Number: 0000809     | Mary Mars       | 1        | \$300.00   | True       | No         | -      | \$300.00   |
| 2/7/2023           |          | CERT MAIL CONTACT LETTER                      | Taylor May      | 1        | \$8.10     | True       | No         | -      | \$8.10     |
| 11/30/2022         |          | AAA filing 012200050205                       | Mary Mars       | 1        | \$300.00   | True       | No         | -      | \$300.00   |
| 11/15/2022         |          | Downloading court order                       | Manny Starr     | 1        | \$5.80     | True       | No         | -      | \$5.80     |
| 10/4/2022          |          | ONE LEGAL Credit Sale04418001                 | Mary Mars       | 1        | \$149.28   | True       | No         | -      | \$149.28   |
| 5/25/2022          |          | One Legal CC Sale:04097886                    | Mary Mars       | 1        | \$72.07    | True       | No         | -      | \$72.07    |
| 5/12/2022          |          | One Legal: Confirmation #26655101             | Mary Mars       | 1        | \$70.00    | True       | No         | -      | \$70.00    |
| 10/27/2021         |          | Confirmation #25808518; Receipt 1107404       | Mary Mars       | 1        | \$1,546.82 | True       | No         | -      | \$1,546.82 |
| 7/26/2021          |          | Mailing PAGA Letter to DEF via Certified Mail | Mary Mars       | 1        | \$6.96     | True       | No         | -      | \$6.96     |
| 7/26/2021          |          | PAGA                                          | Mary Mars       | 1        | \$75.00    | True       | No         | -      | \$75.00    |
| 7/2/2021           |          | Vasquez RR - Anton Menlo Apartments           | Mary Mars       | 1        | \$6.96     | True       | No         | -      | \$6.96     |
| Total - Write offs |          |                                               |                 |          |            |            |            |        | \$0.00     |

|                    |  |             |
|--------------------|--|-------------|
| Total - Unbillable |  | \$0.00      |
| Total - Billable   |  | \$10,282.22 |
| Total              |  | \$10,282.22 |

# **Exhibit 3**



CLASS ACTION SETTLEMENT SOLUTIONS  
P.O. Box 7208, Orange, CA 92863 Telephone (800) 523-5773

[Date]

**Re: Payment From *Darwin Vasquez v. Anton Devco, Inc.*, Sacramento County Superior Court  
Case No. 34-2021-00310326**

Dear <<FIRST\_NAME>> <<LAST\_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Darwin Vasquez v. Anton Devco, Inc.* Case No. 34-2021-00310326 filed in Sacramento County Superior Court (the “Action”).

The Action was filed against Defendant (“Defendant” or “Universal Auto Group, Inc.”) pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (“PAGA”). The Action was brought on behalf of aggrieved employees of Defendant and the State of California defined as all current and former nonexempt employees employed by Defendant in California at any time between July 26, 2020, and February 20, 2024 employed. You have been identified as one of the employees on whose behalf the case was brought.

The Plaintiffs in the Action claimed that Defendant owed civil penalties recoverable under PAGA for alleged violations of the California Labor Code including (1) failure to pay wages and overtime compensation; (2) failure to pay minimum wage; (3) rest break liability under Labor Code Sec. 226.7; (4) meal period liability under Labor Code Sec. 226.7; (5) failure to timely pay wages due at termination or resignation; (6) failure to provide wage statements compliant with Labor Code Sec. 226(a) or any other similar provision; (7) failure to pay sick leave at the correct rate pursuant to Labor Code sections 245.6 or 246; and (8) penalties pursuant to California’s Private Attorneys General Act (Labor Code Sec 2698, *et seq.*) arising out of the same. Defendant denies that it did anything wrong, that it violated the Labor Code or that it owes any civil penalties. The parties agreed to resolve the case. The Court has not ruled on the merits of the Action.

The Court approved the settlement to be paid by Defendant for settlement of the PAGA claim for civil penalties. A portion of that settlement amount goes to the State of California’s Labor and Workforce Development Agency. Another portion of that amount goes to the alleged aggrieved employees. In agreeing to this settlement, Defendant does not admit to any wrongdoing or that it is liable in any way for any civil penalties under PAGA.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties. The amount is calculated based on the number of pay periods you worked as a non-exempt California employee for Defendant during the period from July 26, 2020 to February 20, 2024.

You are not a party to this lawsuit, but you and the State of California are bound by the settlement. If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter), **do not call or write the Court or Office of the Clerk of the Court to ask questions about the settlement.**

Very Truly Yours,

Phoenix Settlement Administrators