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Attorneys for Plaintiff ALEJANDRO VALDEZ

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

ALEJANDRO VALDEZ, individually and on
behalf of others similarly situated;

Plaintiff,

vs.

C.H.I. AUTOMART, INC., a California limited
liability corporation; and DOES 1 through 25,
inclusive,

Defendants.

Case No. 21STCV40168

Assigned to the Hon. Lawrence P. Riff, Dept. 7

**DECLARATION OF JONATHAN M.
GENISH IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: August 25, 2023

Time: 10:00 a.m.

Dept.: 7

Complaint Filed:

November 1, 2021

Trial Date:

Not Set

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1 Los Angeles Times, Deadline, The Hollywood Reporter, Business Insider, Law360, and others. Super
2 Lawyers has regularly honored me as a Southern California Rising Star since 2012.

3 5. In February 2018, I started the plaintiffs labor and employment law firm of Blackstone
4 Law, APC. The firm has grown exponentially over the past three-plus years, now maintaining five
5 highly pedigreed attorneys working on almost exclusively labor and employment class actions, Labor
6 Code Private Attorney General Act of 2004 (“PAGA”) cases, and individual matters, and other private
7 attorney representative actions, with roughly 15% of the firm focused on other complex general
8 litigation matters.

9 6. I have considerable experience in handling class and representative action lawsuits
10 throughout my career and have been approved as counsel in a number of complex cases, including,
11 most recently:

- 12 • *DiRico v. Seek Capital, LLC*, Los Angeles Superior Court, Case No. BC698078, a wage
13 and hour class action brought on behalf of a class of hourly-paid employees working the
14 State of California.
- 15 • *Consumer Protection Group, LLC v. A. D. Sutton & Sons, Inc.*, Los Angeles Superior
16 Court, Case No. 19STCV29979, a private attorney general action for penalties pursuant
17 to Health and Safety Code section 25249.7.
- 18 • *Consumer Protection Group, LLC v. Shaxon Industries, Inc. et al.*, Los Angeles Superior
19 Court, Case No. 19STCV30306, a private attorney general action for penalties pursuant
20 to Health and Safety Code section 25249.7.
- 21 • *Consumer Protection Group, LLC v. Home Depot U.S.A., Inc.*, Los Angeles Superior
22 Court, Case No. 19STCV30445, a private attorney general action for penalties pursuant
23 to Health and Safety Code section 25249.7.
- 24 • *Savoy v. Collector’s Universe, Inc., et al.*, Central District Court of California, Case No.:
25 8:20-cv-00632-DOC-ADS (recently remanded to Orange County Superior Court, Case
26 No. 30-2020-01130892-CU-RI-CXC), a consumer fraud class action.

27 7. I was counsel of record on several class action and PAGA actions that have since been
28 resolved, the most recent of which are as follows:

- *Alexander Gnaedig, et al. v. Favorite Healthcare Staffing, Inc.*, Los Angeles County Superior Court Case No. 21STCV20904, approved as Class Counsel in final settlement of wage and hour Class and PAGA action.
- *Angel Garcia et al. v. J&B Investments, Inc., et al*, San Bernardino Superior Court Case No. CIVSB220860, preliminarily approved as Class Counsel in settlement of wage and hour Class and PAGA action.
- *Richard Evans v. My Paint Stop, LLC, et al.*, Contra Costa Superior Court Case No. MSC21-01812, approved as Class Counsel in final settlement of wage and hour Class and PAGA action.
- *Perla Soto, et al. v. Nippon Express U.S.A, Inc.*, Los Angeles Superior Court Case No. 21STCV24902, preliminarily approved as Class Counsel in settlement of wage and hour Class and PAGA action.
- *Jose Luis Parada George v. Main Electric Supply Company, LLC, et al.*, Orange County Superior Court Case No. 30-2021-01220136-CU-OE-CXC, approved as Counsel for Aggrieved Employees in settlement of representative wage and hour action pursuant to PAGA.
- *Samia Salazar Yunis v. Sharif Jewelers*, Sacramento Superior Court Case No. 34-2020-00290080, approved as Class Counsel in settlement of Class and PAGA wage and hour action.
- *Daniel Analco v. Felix Chevrolet*, Los Angeles Superior Court Case No. 21STCV36654, approved as Class Counsel in settlement of Class and PAGA wage and hour action.
- *Sasha Aiono v. Benefit Cosmetics*, Los Angeles Superior Court Case No. 21STCV33719, approved as Counsel for Aggrieved Employees in settlement of representative wage and hour action pursuant to PAGA.
- *DiRico v. Seek Capital, LLC*, Los Angeles Superior Court, Case No. BC698078, a wage and hour class action brought on behalf of a class of hourly-paid employees working the State of California.

- *Maria Castillo-Rodriguez v. HR Outsourcing Associates, LLC*, Los Angeles Superior Court, Case No. 20STCV44138, approved as Counsel for Aggrieved Employees in settlement of representative wage and hour action pursuant to PAGA.
- *Cruz v. LK Plumbing & Heating, Inc.*, Los Angeles Superior Court, Case No. BC686825, approved as Counsel for Aggrieved Employees in settlement of representative wage and hour action pursuant to PAGA.

8. I am currently the managing partner overseeing more than 100 labor and employment cases, approximately 80% of which include a wage and hour component. The majority of these cases are wage-and-hour putative class actions or representative PAGA actions seeking relief on behalf of thousands of California employees.

Procedural History of the Action

9. On September 29, 2021, Plaintiff provided notice to the LWDA and to Defendant of his intent to seek civil penalties pursuant to the Private Attorneys General Act, Labor Code section 2698, et seq. (“PAGA”). On November 1, 2021, Plaintiff provided an Amended Notice to the LWDA. True and correct copies of Plaintiff’s notice and amended notice to the LWDA are attached hereto as **Exhibit A and B**, respectively. On November 1, 2021, Plaintiff Valdez filed a class action complaint against Defendant in the Los Angeles Superior Court. Plaintiff alleged nine causes of action for: (1) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 510 and 1198); (2) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 512(a)); (3) Failure to Provide Rest Periods (Cal. Lab. Code § 226.7); (4) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1194, 1197, and 1197.1); (5) Failure to Timely Pay Wages Upon Termination (Cal. Lab. Code §§ 201, 202, 203); (6) Failure to Timely Pay Wages During Employment (Cal. Lab. Code §§ 204, 210); (7) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226(a)); (8) Failure to Reimburse Necessary Business Expenses (Cal. Lab. Code §§ 2800, 2802); and (9) Unfair Competition (Cal. Bus. & Prof. Code §§17200, et seq.). On January 20, 2022, Plaintiff amended his complaint to add a PAGA cause of action (Cal. Lab. Code §§ 2698, et seq.).

10. Very shortly after this matter was filed, the parties met and conferred with respect to the potential resolution of this action and agreed to private mediation. Initially, mediation was set for

July 22, 2022, but the parties decided not to proceed with mediation at that time, in part due to Defendant's position that the majority of employees at issue had signed arbitration agreements that contained class and PAGA waivers, and in part due to the United States Supreme Court's decision in the *Viking River* case. The parties continued to discuss and debate the merits of the case and ultimately decided to reschedule mediation. Defendant informally produced information, documents and a sampling of employees' time and payroll records with respect to the alleged Class and PAGA members sufficient to satisfy the criteria for court approval set forth in the *Dunk v. Foot Locker Retail, Inc.* and *Kullar v. Foot Locker Retail, Inc.* cases.

11. After a thorough investigation and analysis of the documents and data, the parties attended a private mediation on January 12, 2023, with Marc J. Feder, a neutral and respected mediator with extensive experience in complex wage and hour matters. At the mediation, the parties engaged in intensive settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims. After a full day of mediation, and with the help of the mediator, the parties were able to reach an agreement to resolve this dispute on a class and representative basis. Thereafter, the parties spent several weeks negotiating a memorandum of understanding ("MOU") memorializing the key settlement terms. After further negotiation, an agreed-upon MOU was executed by the parties as of February 12, 2023. The parties then spent many hours drafting and revising the terms into a long form settlement agreement.

12. After additional discussions and revisions to the agreement, the Settlement Agreement was fully executed as of April 26, 2023. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit C**.

Summary of the Terms of the Settlement Agreement

13. For purposes of settlement only, the Parties have agreed that the Class shall be defined as "all current and former non-exempt or hourly paid employees of Defendant that have worked for Defendant in the State of California during the Class Period" ("Class Members" or "Class"). The Class Period and release of claims begins on November 1, 2017, and ends on December 8, 2022. It is estimated that there are 126 Class Members.

14. The PAGA Period begins on September 29, 2020 and ends on December 8, 2022 and

1 includes “all current and former non-exempt or hourly paid employees of Defendant that have worked
2 for Defendant in the State of California during the PAGA Period (“Aggrieved Employees”). It is
3 estimated that there are 119 Aggrieved Employees.

4 15. The parties have agreed to settle the Class and PAGA claims at issue in the Complaint
5 for a non-reversionary Gross Settlement Payment of Four Hundred Thousand Dollars and Zero Cents
6 (\$400,000.00), exclusive of any employer-side payroll taxes. The Gross Settlement Payment is a
7 common fund and therefore includes all requested costs, fees, and other allocations. As stated above,
8 the Gross Settlement Payment includes: (1) Class Counsel’s fees in the amount of one-third of the
9 Gross Settlement Payment, equaling One Hundred Thirty-Three Thousand, Three Hundred Thirty-
10 Three Dollars and Thirty-Three Cents (\$133,333.33); (2) Class Counsel’s actual litigation costs, not
11 to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00); (3) Settlement Administration
12 Costs, capped at Eight Thousand Dollars and Zero Cents (\$8,000.00); (4) Class Representative Service
13 Payment in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff; and (5)
14 PAGA Penalties of Ten Thousand Dollars and Zero Cents (\$10,000.00). After the above-estimated
15 amounts are deducted from the Gross Settlement Payment, approximately 126 Class Members will
16 share in a Net Settlement Fund of approximately Two Hundred and Twenty-Three Thousand Six
17 Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$223,666.67).

18 16. The Net Settlement Fund will be distributed and paid to Participating Class Members
19 on a pro-rata basis based on the number of workweeks worked during the Class Period. This will
20 provide Participating Class Members with an average estimated payment of \$1,775.13. The actual
21 payments to Participating Class Members will vary based on the actual weeks worked by Participating
22 Class Members and shall be confirmed by the Settlement Administrator in advance of the final
23 approval hearing. Employees who worked during the PAGA Period shall also receive a share of the
24 25% portion of the PAGA Penalties designated for distribution to PAGA Members. These payments
25 will be distributed on a pro-rata basis based on the number of workweeks worked during the PAGA
26 Period. Payments to Participating Class Members will be allocated as 20% wages and 80% interest
27 and penalties. The employee share of any applicable payroll taxes on wages will be deducted from
28 the wage portion of each Participating Class Member’s Individual Settlement Payment. Employer-

side payroll taxes shall be paid by Defendant separately from and in addition to the Gross Settlement Payment.

17. The Settlement Agreement is a non-reversionary and a non-claims made settlement. All money from the Net Settlement Fund will be distributed to Participating Class Members. No money will revert to Defendant.

18. Any Individual Settlement Payment checks remaining uncashed after 180 days will be transferred to the California State Controller's Office and held in a trust for such Participating Class Members and PAGA Members. As such, no "unpaid residue" under California Code of Civil Procedure section 384 will result from the Settlement.

19. In exchange for participating in the settlement, Plaintiff shall release and waive all of his rights under California Civil Code section § 1542 against Defendant; however, the release for Participating Class Members is narrowly tailored to only release claims based upon the facts alleged in the operative complaint during the Class and PAGA Periods.

The Settlement is Reasonable

Method of Distribution

20. The proposed settlement is based on the number of workweeks worked by the Settlement Class Members. This method is commonly used in wage and hour class actions because it relies upon objective evidence of the total weeks of employment, which Settlement Class Members can easily review and confirm for themselves. This information is readily available from Defendant's records, and the Settlement Administrator can apply the formula for determining each Participating Class Member's Individual Settlement Share in a fair and transparent manner.

21. In addition, this method of distribution is commonly used in wage and hour class actions because it allows for a distribution that corresponds closely to the alleged damages since employees experience the same working conditions, so their damages are directly related to the amount of time that they were employed.

Discovery and Informed Arms-Length Negotiations

22. During settlement discussions, the Parties conducted their negotiations at arm's-length, in an adversarial position. Arriving at a settlement that was acceptable to all Parties was difficult.

1 Defendant and its counsel felt strongly about their ability to defeat a motion for class certification and
2 to prevail on the merits at trial, whereas Plaintiff and her counsel strongly believed that they would be
3 able to certify the class and prevail at trial. In preparation for mediation, on January 12, 2023, Plaintiff
4 Valdez initially provided Defendant with a detailed list of documents and data needed for mediation
5 of this action. Defendant provided key data points including the start date of its operations in
6 California, the total number of employees during the relevant time period, total number of workweeks,
7 and number of meal and rest period premiums paid. Defendant also provided relevant excerpts from
8 its Employee Handbooks. In sum, through informal discovery, Plaintiff obtained time and payroll data
9 for Plaintiff and a sample of the putative class, and key data points including the class size and
10 composition, the number of workweeks worked, the number of locations, average rate of pay, and the
11 number of terminated employees – all of which enabled Plaintiff to assess the nature and extent of
12 Defendant’s potential liability and damages.

13 23. The Parties extensively briefed issues regarding class certification and liability and
14 provided their analyses to the mediator who helped the parties debate the strengths and weakness of
15 their respective positions. Additionally, settlement negotiations were conducted by highly capable
16 and experienced counsel. Plaintiff engaged in additional negotiations in order to finalize the long-
17 form agreement presently before the Court. At all times, Plaintiff was willing and prepared to litigate
18 this matter through class certification and trial if the parties had been unable to reach a favorable
19 resolution. Class Counsel are respected members of the California State Bar with strong records of
20 vigorous and effective advocacy and are experienced in handling complex wage and hour class action
21 litigation. Accordingly, Class Counsel had sufficient information and experience to act intelligently
22 in negotiating the Settlement.

23 ***Estimate of Potential Value of Class Claims***

24 24. Prior to mediation, Class Counsel analyzed a sampling of time and payroll records
25 provided by Defendant and other relevant documents and discovery. Based on the discovery provided,
26 Class Counsel estimated with respect to the class claims, with all claims adjudicated in favor of the
27 Class, that Defendant faced a maximum potential liability of \$3,675,931. This estimate is based off
28 an estimated maximum potential liability for each of the alleged claims as follows: \$1,024,857 for

meal period violations; \$1,905,442 for rest period violations, \$127,634 for unpaid wages (off the clock), \$89,392 for unpaid overtime wages (improper regular rate of pay), \$189,356 for waiting time penalties for 47 terminated employees and \$339,250 in wage statement penalties. Plaintiff further estimated that Defendant faced an additional exposure of \$358,600 in potential *unstacked* PAGA penalties.

Specific Risks Considered

25. Although the investigation and information discovered supports Plaintiff's contentions, Defendant raised potential defenses and other circumstances that impacted the risk of proceeding on a class-wide basis. Consideration of these risks factored into the decision to enter this Settlement.

26. Class Counsel are aware of Defendant's defenses and arguments and have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation, including those involved in class and/or representative adjudication. Plaintiff further recognizes the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, Defendant's defenses, and the difficulties in establishing entitlement to monetary recovery. Plaintiff has also considered the Parties' settlement discussions, as well as the evaluations of the mediator, who is experienced and well regarded in complex labor and employment matters.

27. Defendant denied and continues to deny any liability and wrongdoing of any kind associated with the claims alleged in this action, and further denies that class certification is appropriate for any purpose other than this Settlement. Defendant believes that it would ultimately prevail in this action. Defendant proffered defenses to both certification and to the merits of Plaintiff's claims. Defendant contended that Plaintiffs claims are not suitable for class certification because individual issues would predominate should this case go to trial. As with all class actions, these complex cases raise difficult management and proof issues and, accordingly, there is a significant risk that the Court may deny class certification.

28. For example, Plaintiff believes a large portion of Defendant's overall potential liability lies in Plaintiff's meal period claims. These claims have been increasingly difficult to certify in recent years and Defendant contended its practices were lawful. *See Brinker*, 53 Cal. 4th at 1034-35. Plaintiff's theory of liability for meal period violations was based on allegations that Defendant had

1 failed to implement lawful practices that allowed Class Members to take meal breaks in the manner
2 required under California law. *See Bradley v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129 (2012)
3 (holding that “the lack of a meal/rest break policy and uniform failure to authorize such breaks are
4 matters of common proof.”). Specifically, Plaintiff asserts that Defendant did not provide him and
5 others with the opportunity to take timely, uninterrupted 30-minute meal periods when they worked
6 shifts of five hours or more, or take a second lawful meal break on shifts that exceeded 10 hours.
7 Further, Plaintiff alleged that Defendant instructed him and others to clock out for their meal periods,
8 but continue working through them. And even when meal periods were taken, Plaintiff and others
9 were frequently interrupted and asked to return to work to assist a customer. Plaintiff further alleged
10 that Defendant did not have a policy or practice to pay meal period premiums for all noncompliant
11 meal periods. In contrast, Defendant argued that its written meal break policy and its practices at all
12 times during the class period were lawful. Defendant argued that the rate of purported meal period
13 violations reflected in the data would require individualized inquiry and that such inquiry would
14 prohibit a class from being certified. Class Counsel disagreed with this assessment but had to consider
15 the risk that the Court would find validity in an individualized proof defense to certification of
16 Plaintiff’s meal period claim.

17 29. Plaintiff’s rest period allegations were based on a similar lack of lawful practice and
18 failure to provide employees with timely, full, and uninterrupted rest periods due to the excessive
19 demands during employees’ shifts. Plaintiff further alleged that Defendant’s written rest break policy
20 violated California law by requiring employees to remain on the premises during rest breaks. Plaintiff
21 also contended that Defendant lacked any policy or practice to compensate employees who were not
22 permitted to take lawful rest periods. As with the meal period allegations, Defendant contended that
23 it did provide rest breaks and relieve Class Members of all duties as required under California law.
24 This claim, however, was even more uncertain given the difficulties associated with proving the
25 alleged rest period violations, as Defendant was not required to record these breaks. Given the lack
26 of records demonstrating rest period violations, there were legitimate concerns Plaintiff would not be
27 able to certify these claims or prove substantial damages with requisite certainty.

28 30. Plaintiff also faced challenges certifying and proving liability for their minimum wage

1 and overtime claims. These claims were largely based on unrecorded, off-the-clock work performed
2 by the Class Members both before and after their shifts, as well as during meal breaks. As such, the
3 individualized nature of the damages presented substantial concerns regarding the manageability of
4 the case and the risk the Court could find these issues prevented certification.

5 31. We also recognized that, even if Plaintiff prevailed at class certification, proving the
6 amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
7 proposition. In order to prove liability and damages, we would need to obtain and analyze thousands
8 more pages of documents, as well as obtain the Class Members' contact information and contact each
9 of them and obtain their declarations at great expense. Moreover, even if Plaintiff prevailed against
10 Defendant's arbitration agreements and succeeded on class certification and trial, likely appeals would
11 substantially delay any recovery to the Class.

12 32. Both sides have had the opportunity to review documents and information relating to
13 Plaintiff's and the Settlement Class Members' employment with Defendant, and Defendant's
14 operations and employment policies, practices, and procedures. The Parties also reviewed and
15 analyzed a sampling of the time and pay data of the Settlement Class Members to determine the
16 potential value and strength of the claims. The available information enabled Class Counsel to estimate
17 the potential claims of the Settlement Class and prepare damages/valuation models. Accordingly, the
18 Parties have conducted adequate investigation and discovery to be sufficiently informed of the nature
19 and extent of the Settlement Class Members' claims, and to enable both sides to fully evaluate the
20 Settlement for its fairness, adequacy, and reasonableness. The Parties have agreed that the matter is
21 well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the
22 costs and risks to both sides that would attend further litigation. The Settlement takes into account the
23 strengths and weaknesses of each side's position and the uncertainty of how the case might have
24 concluded at trial, and/or after exhaustion of all appeals.

25 33. Therefore, taking into account the risk that Defendant's arbitration agreements would
26 be enforced, and the subsequent risk of not obtaining class certification, we discounted Defendant's
27 estimated liability by 75% (reducing the damages to \$918,982.75). The merits-based risk factors also
28 reduced Defendant's estimated liability by an additional 50%. This resulted in an adjusted estimated

1 liability of \$459,491.38.

2 34. My office also separately contemplated the risks of proceeding with the PAGA action
3 and potential liability Defendant could face from this claim. First, we recognized that the PAGA claims
4 would be subject to the same defenses and risks as Plaintiff's underlying wage claims. Moreover,
5 although California case law clearly states that PAGA actions need not satisfy class action
6 requirements, Class Counsel remained mindful of the fact that some courts have nevertheless held that
7 PAGA claims must meet a threshold "manageability" requirement. *See, e.g., Wesson v. Staples the*
8 *Office Superstore, LLC*, 68 Cal.App.5th 746 (2021). Class Counsel also anticipated that even if
9 successful on the merits at trial, the imposition of cumulative civil penalties based on the alleged wage
10 and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory, and that
11 Defendant would argue that it made a good faith attempt to comply with its legal obligations
12 warranting a reduction in penalties. Class Counsel also anticipated Defendant would argue that it made
13 a good faith attempt to comply with its legal obligations, and that the violations per pay period were
14 low, warranting an additional reduction in civil penalties. Finally, Class Counsel was also mindful of
15 the fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended
16 to facilitate enforcement of California's labor laws by financing state activities and educating and
17 deterring non-compliance. Therefore, the parties agreed during settlement negotiations to allocate
18 \$10,000.00 of the Settlement towards the PAGA claims, which represents approximately 2.5% of the
19 Gross Settlement Payment. This percentage of the settlement is well within the range of wage and
20 hour settlements regularly approved in both state and federal court for cases that include both a class
21 and PAGA action. Typically, such hybrid cases allocate only 1% of the gross settlement value to
22 resolve PAGA claims, and, indeed, settlement allocations of as little as 0.22% of the gross settlement
23 amount have been approved as reasonable by courts.

24 35. In allocating \$10,000.00 to Plaintiff's PAGA claims, my office considered that PAGA
25 penalties would be subject to the same defenses and risks as Plaintiff's class claims, as well as defenses
26 unique to PAGA. Even if Plaintiff were successful on the merits at trial, the imposition of cumulative
27 civil penalties based on the alleged wage and hour violations could be considered unjust, arbitrary and
28 oppressive, or confiscatory, and Defendant could argue that it made a good faith attempt to comply

1 with its legal obligations warranting a reduction in penalties. Class Counsel was also mindful of the
2 fact that PAGA is fundamentally not intended to be compensatory in nature, but is instead intended to
3 facilitate enforcement of California's labor laws by financing state activities and educating and
4 deterring non-compliance.

5 36. I therefore submit that the Settlement is fair, reasonable, and adequate. The Settlement
6 is in the best interest of the Class Members and is within the accepted range of recoveries for this type
7 of litigation given the inherent risk of litigation, the risk of obtaining and maintaining class
8 certification, and the costs of further litigation.

9 ***Class Representative Service Payment***

10 37. As part of the settlement agreement, Plaintiff is requesting a reasonable enhancement
11 award of \$5,000.00 to named Plaintiff Alejandro Valdez. This enhancement is eminently reasonable
12 given the time and effort Plaintiff spent on this case, and the benefit to the other putative class members
13 as a result of Plaintiff's actions. Plaintiff's Motion for Final Approval will expand on Plaintiff's
14 participation in the lawsuit and additional reasons regarding the reasonableness of the enhancement
15 award. Notice of the requested enhancement award is disclosed to the Class Members in the Notice
16 of Class Action Settlement.

17 ***Attorneys' Fees and Costs***

18 38. The attorneys' fees incurred by Class Counsel are in line with the common fund
19 requested. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees in an
20 amount of up to one-third (33%) of the Gross Settlement Payment (i.e., \$133,333.33) and actual
21 litigation costs and expenses in an amount not to exceed Twenty Thousand Dollars (\$20,000.00),
22 which will be paid out of the Gross Settlement Payment, subject to approval by the Court. Class
23 Counsel have borne all of the risks and costs of litigation and will not receive any compensation until
24 recovery is obtained.

25 39. The effectiveness of Blackstone Law, APC's prosecution of this matter has translated
26 into tangible monetary benefits for the Settlement Class Members as follows: (1) Settlement Class
27 Members will obtain monetary recovery over a relatively short period of time, as opposed to waiting
28 additional years for the same, or potentially worse, result; (2) a guaranteed result that compares

1 favorably with other similar class action settlements of this type, given the strengths and weaknesses
2 of the case; and (3) significant savings in Class Counsel's fees and/or costs that would have only
3 increased significantly had the case progress through trial and/or appeals.

4 40. Class Counsel have litigated this matter for close to a year and were actively preparing
5 this matter for class certification and trial. The Motion for Final Approval will elaborate on the nature
6 of the legal services provided, the time incurred in performing those services, and Class Counsel's
7 hourly rates. The Motion for Final Approval will also elaborate on the reimbursement costs sought
8 by Class Counsel. Notice of the requested award of fees and costs is included in the Notice to the
9 Class. (See Settlement Agreement, Exh. 1).

10 ***Notice to the Class***

11 41. The Parties have agreed to retain ILYM Group, Inc. ("ILYM" or "Settlement
12 Administrator") to handle the notice and settlement administration process. The Parties respectfully
13 request that the Court appoint ILYM to handle these procedures and to serve as the Settlement
14 Administrator. Defendant will provide ILYM with the Class List and ILYM will calculate each
15 Settlement Class Member's estimated Individual Settlement Share. ILYM will also receive requests
16 for exclusion from the Settlement, objections to the Settlement, and disputes about the number of
17 workweeks worked; will provide necessary reports and declarations; will calculate, subtract, and
18 transmit the employees' and employer's share of taxes and withholdings with respect to the wages
19 portion of the Individual Settlement Shares; will prepare and submit informational and other tax filings
20 and documents; will issue and transmit all payments provided for by the Settlement, including, but not
21 limited to, mailing Individual Settlement Payment checks to the Participating Class Members; and
22 perform any other usual and customary duties for administering a class action settlement.

23 42. I am not aware of an alternative method of providing notice to the Class which would
24 result in a higher likelihood of actual notice. The original source of the mailing addresses is from each
25 Class Member, who provided the information to Defendant. As a fail-safe to this highly reliable
26 method, skip tracing will be performed, if necessary.

27 ***Notice to the LWDA***

28 43. In accordance with Labor Code sections 2699 et. seq., and simultaneously with the

1 filing of Plaintiff's Motion, Plaintiff's counsel provided notice of the proposed settlement, including
2 the Settlement Agreement and this Motion, to the LWDA via online submission to the LWDA. A true
3 and correct copy of the email confirming receipt from the LWDA is attached hereto as **Exhibit D**.

4 I declare under penalty of perjury under the laws of the State of California that the foregoing
5 is true and correct.

6 Executed on June 6, 2023, at Beverly Hills, California

7
8 Jonathan M. Genish

EXHIBIT A

September 29, 2021

PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency

RE: *Alejandro Valdez v. CHI Automart, Inc.*

Dear PAGA Administrator:

This office represents Alejandro Valdez (“Claimant”), who was employed by CHI Automart, Inc. (including any and all affiliates, subsidiaries, parents, directors, officers, and employees) (collectively referred to as “Employer”) as a Salesperson in the State of California from approximately February 19, 2020 to April 2, 2021. This letter shall serve as Claimant’s notice pursuant to the Private Attorneys General Act of 2004 (“PAGA”) (California Labor Code (“Cal. Lab. Code”) § 2699.3), of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code, which are recoverable under PAGA, and all other remedies available under PAGA, including an amount sufficient to recover underpaid wages pursuant to Labor Code section 558. Claimant seeks these remedies on behalf of the State of California and all aggrieved employees. The aggrieved employees on whose behalf Claimant will file a PAGA cause of action includes all current and former non-exempt employees who worked for Employer in the State of California during the relevant statutory period.

As set forth below, Employer has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.2, 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198, and Industrial Welfare Commission Wage Orders including *inter alia*, Wage Order 1-2001.

Failure to Pay Minimum Wages and Failure to Pay Overtime Wages

Employer violated California Labor Code sections 1194, 1197, and 1197.1 by failing to pay Claimant and other aggrieved employees at least minimum wages for all hours worked. Claimant and other aggrieved employees were required to perform work duties off-the-clock prior to clocking-

in and after clocking-out. Such off-the-clock work included, but was not limited to, undergoing COVID-19 screenings, gathering tools and materials, and putting away tools and materials. By failing to pay Claimant and other aggrieved employees any wages for off-the-clock work, Employer violated Labor Code sections 1194, 1197, and 1197.1, which require employers to pay at least the legal minimum wage to their employees.

California Labor Code sections 510 and 1198 require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek. During the relevant time period, Claimant and other aggrieved employees worked in excess of 8 hours in a day and/or 40 hours in a week without overtime compensation because Employer failed to pay them for off-the-clock work as described above. On occasions when Claimant and other aggrieved employees had already worked eight hours in one day on-the-clock and also performed work off-the-clock, Employer failed to pay them overtime compensation for this off-the-clock work. Defendants failed to correctly calculate the overtime rate of compensation by failing to include time spent working “off-the-clock” in the number of hours worked each pay period. In addition, Employer failed to correctly calculate the overtime rate of pay by failing to include non-discretionary commissions, non-discretionary bonuses, and/or non-discretionary performance pay in the regular rate of pay for purposes of overtime compensation.

Failure to Provide Meal Periods and Rest Periods

California law requires employers to provide their employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). Further, an uninterrupted rest period of no less than ten (10) minutes must be provided for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. When an employer fails to provide a meal or rest period, an hour of pay at the employee’s regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Employer failed to provide aggrieved employees with an opportunity to take timely, uninterrupted meal and rest periods of the requisite length. Employer failed to keep records of when and whether Claimant and the aggrieved employees took meal periods. Employer failed to compensate aggrieved employees properly for non-compliant meal and rest periods including, *inter alia*, missed, short, late, and/or interrupted meal and rest periods. Employer failed to issue meal period and rest period premiums on each occasion that a meal period or rest period was not provided. On those occasions when Employer did pay meal and/or rest period premiums, it failed to do so at the correct rate. On occasions when meal period and/or rest period premiums were paid,

Employer paid them at the base hourly rate of pay rather than at the regular rate of compensation.

Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employer failed to pay Claimant other aggrieved employees all wages due to them, including minimum wages, overtime wages, wages for non-productive time, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Failure to Timely Pay Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, when Claimant and the other aggrieved employees' employment ended, including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned, Employer failed to pay them all wages due to them upon termination of their employment, including minimum wages, overtime wages, wages for non-productive time, and/or meal and rest period premium wages.

Failure to Keep Accurate Payroll Records

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, Employer failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages paid, to Claimant and other aggrieved employees.

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Failure to Furnish Accurate Itemized Wage Statements

Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer. Employer failed to provide wage statements to Claimant and other aggrieved employees stating, *inter alia*, the total hours worked (including time spent working off-the-clock) and the amount of non-productive time worked, the rate of compensation, and the gross wages paid as required pursuant to California Labor Code section 226.2.

Employer is in direct violation of numerous California wage and hour laws including but not limited to said sections stated above. We hereby provide notice under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2699, et seq., and specifically ask for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that we may allege a cause of action under PAGA against Employer for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, et seq., by seeking redress in court. Labor Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Labor Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Labor Code § 2699.3(a)(2)(A). It is the intention of this law firm to file a civil complaint and to bring the appropriate claims under Labor Code § 2699 should your office not address these matters within this time. Should you require anything further or have questions, please do not hesitate to contact me.

BLACKSTONE LAW



Benjamin J. Kussman

Cc: By U.S. Certified Mail, Return Receipt Requested

Cynthia Elkins
Elkins Employment Law
21860 Burbank Blvd., Suite 360
Woodland Hills, California 91367

Robert J. Robertson
Agent for Service of Process for CHI Automart, Inc.
455 Auto Vista Dr.
Palmdale, California 93551

EXHIBIT B

November 1, 2021

PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)

Sacramento, CA 95814

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: *Alejandro Valdez v. C.H.I. Automart, Inc.*
LWDA Case No. LWDA-CM-846429-21
Amended Notice Pursuant to Cal. Labor Code § 2699.3

Dear PAGA Administrator:

This office represents Alejandro Valdez (“Claimant”) with respect to his claims under the California Labor Code against C.H.I. Automart, Inc. (including any and all affiliates, subsidiaries, parents, directors, and officers thereof) (collectively referred to herein as “Employer”). This letter is being sent simultaneously to Employer by certified mail.

Employer employed Claimant from approximately February 19, 2020 to April 2, 2021, as an hourly-paid, non-exempt employee. During his employment with Employer, Claimant was employed as a salesperson at Employer’s location at 455 Auto Vista Drive, Palmdale, California 93551. Employer is an auto dealership.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“**PAGA**”). Claimant is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employer in the State of California during the relevant statutory period (“**Aggrieved Employees**”).

This amended notice letter is being sent in compliance with California Labor Code section 2699.3, and shall serve as Claimant’s notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof. This amended notice letter sets forth additional claims and facts and theories which were not identified in Claimant’s original September 29, 2021 notice.

As set forth below, Employer has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections

201, 202, 203, 204, 226(a), 226.2, 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802 and Industrial Welfare Commission Wage Orders including *inter alia*, Wage Order Nos. 1-2001, 4-2001, and 7-2001. The claims made on behalf of Claimant and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employer has engaged in numerous unlawful practices which resulted in the failure to pay Claimant and other Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

Employer violated California Labor Code sections 1194, 1197, and 1197.1 by failing to pay Claimant and other Aggrieved Employees at least minimum wages for all hours worked. Claimant and other Aggrieved Employees were required to perform work duties off-the-clock prior to clocking-in and after clocking-out. Such off-the-clock work included, but was not limited to, undergoing COVID-19 screenings, gathering tools and materials, putting away tools and materials, and taking mandatory examinations that were required in order to maintain employment with Employer. By failing to pay Claimant and other Aggrieved Employees any wages for off-the-clock work, Employer violated Labor Code sections 1194, 1197, and 1197.1, which require employers to pay at least the legal minimum wage to their employees.

California Labor Code sections 510 and 1198 require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek. During the relevant time period, Claimant and other Aggrieved Employees worked in excess of 8 hours in a day and/or 40 hours in a week without overtime compensation because Employer failed to pay them for off-the-clock work as described above. On occasions when Claimant and other Aggrieved Employees had already worked eight hours in one day on-the-clock and also performed work off-the-clock, Employer failed to pay them overtime compensation for this off-the-clock work. Defendants failed to correctly calculate the overtime rate of compensation by failing to include time spent working “off-the-clock” in the number of hours worked each pay period. In addition, Employer failed to correctly calculate the overtime rate of pay by failing to include non-discretionary commissions, non-discretionary bonuses, and/or non-discretionary performance pay in the regular rate of pay for purposes of overtime compensation.

As a result of the foregoing practices, Employer has failed to pay Claimant and other Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employer violated IWC Wage Order Nos. 1, 4 and 7, and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 1, 4 and 7; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys’ fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

California law requires employers to provide their employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

During the relevant time period, Employer failed to provide Claimant and other Aggrieved Employees with legally-compliant 30-minute meal periods. Claimant and other Aggrieved Employees were required by Employer to work more than five (5) hours per day, but were not provided with uninterrupted 30-minute meal periods. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employer regularly required Claimant and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. On the occasions that Claimant and other Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short.

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employer failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employer required Claimant and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to telephone calls and in-person verbal interruptions; and (7) Employer's policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees right to receive timely, uninterrupted, and duty-free meal periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law. On those occasions when Employer did pay meal period premiums, it failed to do so at the correct rate. On occasions when meal period premiums were paid, Employer failed to include all non-discretionary payments for work performed by Claimant and the other Aggrieved Employees in the regular rate of compensation when issuing meal period premiums, including but not limited to, non-discretionary commissions, non-discretionary bonuses, and/or non-discretionary performance pay.

Accordingly, Employer violated IWC Wage Order Nos. 1, 4, and 7 and California Labor

Code sections 226.7, 512(a) and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 1, 4 and 7; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

California law requires employers to authorize and permit their employees with an uninterrupted rest period of no less than ten (10) minutes must for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. When an employer fails to authorize and permit a rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Employer failed to authorize and permit Claimant and other Aggrieved Employees to take legally-compliant 10-minute rest periods. Employer required Claimant and other Aggrieved Employees to work through rest periods. Claimant and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimant and other Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employer failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer required Claimant and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to telephone calls and in-person verbal interruptions; and (7) Employer's policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees right to receive rest periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law. On occasions when rest period premiums were paid, Employer failed to include all non-discretionary payments for work performed by Claimant and the other Aggrieved Employees

in the regular rate of compensation when issuing rest period premiums, including but not limited to, non-discretionary commissions, non-discretionary bonuses, and/or non-discretionary performance pay.

Accordingly, Employer violated IWC Wage Order Nos. 1, 4 and 7 and California Labor Code sections 226.7, and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 1, 4, and 7 California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employer failed to pay Claimant other Aggrieved Employees all wages due to them, including minimum wages, overtime wages, wages for non-productive time, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204. Accordingly, Employer violated California Labor Code section 204(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order Nos. 1, 4 and 7 require employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimant and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employer. These costs include, but are not limited to, use of their personal cell phones and personal computers for work-related purposes.

Accordingly, Employer violated IWC Order Nos, 1, 4, and 7, and California Labor Code sections 2800 and 2802.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order Nos. 1, 4, and 7; and attorneys' fees and costs.

6. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, upon the termination of employment (including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned), Claimant and Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employer's practices of requiring Claimant and Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employer failed to pay Claimant and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employer also failed to pay Claimant and Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employer violated California Labor Code sections 201 and 202.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 203, 1199, and 2699(f)(2); and attorneys' fees and costs.

7. FAILURE TO MAINTAIN ACCURATE RECORDS

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, Employer failed to keep accurate and complete payroll records showing the actual hours worked daily, meal periods, and the wages paid, to Claimant and other Aggrieved Employees. Accordingly, Employer violated IWC Wage Order Nos 1, 4, 7, and California Labor Code sections 1198.5 and 1174(d).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No.1, 4, and 7; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

8. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any

applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer. Employer failed to provide wage statements to Claimant and other Aggrieved Employees stating, *inter alia*, the total hours worked (including time spent working off-the-clock) and the amount of non-productive time worked, the rate of compensation, and the gross wages paid as required pursuant to California Labor Code section 226.2.

As a result of the practices described herein, the wage statements provided to Claimant and other Aggrieved Employees failed to include the actual hours worked (including time spent working off-the-clock), the actual gross wages earned (including wages owed for time spent working off the clock and meal and rest period premiums), and the correct rates of pay. Accordingly, Employer violated California Labor Code section 226(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

Employer is in direct violation of numerous California wage and hour laws including but not limited to said sections stated above. We hereby provide notice under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698, et seq., and specifically ask for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that we may allege a cause of action under PAGA against Employer for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, et seq., by seeking redress in court. Cal. Lab. Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Cal. Lab. Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Cal. Lab. Code § 2699.3(a)(2)(A). It is Claimant's intention to file a civil complaint and to bring the appropriate claims under California Labor Code § 2699 on behalf of himself, the State of California and all Aggrieved Employees should your office not address Employer's alleged violations within this time.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW

A handwritten signature in blue ink, appearing to read "S. Emi Minne".

S. Emi Minne, Esq.

Cc: By U.S. Certified Mail, Return Receipt Requested

Cynthia Elkins
Elkins Employment Law
21860 Burbank Blvd., Suite 360
Woodland Hills, California 91367

C.H.I. Automart, Inc.
Attn: Robert J. Robertson, Agent for Service of Process
455 Auto Vista Dr.
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EXHIBIT C

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

ALEJANDRO VALDEZ, individually and on
behalf of others similarly situated,

Plaintiff,

vs.

C.H.I. AUTOMART, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 21STCV40168

Assigned to the Hon. Lawrence P. Riff, Dept. 7

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Complaint Filed: November 1, 2021

IT IS HEREBY STIPULATED, by and between Plaintiff Alejandro Valdez (“Plaintiff”), as a representative of all Class Members and Aggrieved Employees defined below, and Defendant C.H.I. Automart, Inc. (“Defendant”) (Plaintiff and Defendant are referred to collectively herein, as the “Parties”), and subject to the approval of the Court, the lawsuit filed in Los Angeles Superior Court, Case No. 21STCV40168 (“Action”) is hereby compromised and settled pursuant to the terms and conditions set forth in this Joint Stipulation of Class Action and PAGA Settlement and Release (“Agreement,” “Settlement,” or “Stipulation of Settlement”) and that the Court shall make and enter judgment, subject to the continuing jurisdiction of the Court as set forth below, and subject to the definitions, recitals, and terms set forth herein which by this reference become an integral part of this Stipulation of Settlement.

1. DEFINITIONS.

1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Alejandro Valdez, et al, v. C.H.I. Automart, Inc.*, Los Angeles Superior Court Case No. 21STCV40168 initiated on November 1, 2021 and pending in Superior Court of the State of California, County of Los Angeles.

1.2. “Administrator” means ILYM Group, Inc., 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 Preliminary Approval of the Settlement.

1.4. “Aggrieved Employee” means all current and former non-exempt or hourly paid employees of Defendant that have worked for Defendant in the State of California during the PAGA Period.

1.5. “Class” means all current and former non-exempt or hourly paid employees of Defendant that have worked for Defendant in the State of California during the Class Period.

1.6. “Class Counsel” means Jonathan M. Genish, Miriam Schimmel, and Joana Fang of Blackstone Law, APC.

1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods and/or dates of employment.

1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).

1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member 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 Class Members.

1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from November 1, 2017 to December 8, 2022.

1.13. “Class Representative” means the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. “Court” means the Superior Court of California, County of Los Angeles.

1.16. “Defendant” means named Defendant C.H.I. Automart, Inc..

1.17. “Defense Counsel” means Nicole Kamm and Joel Moon of Fisher & Phillips LLC, and Cynthia Elkins of Elkins Employment Law.

1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment

1 is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class
2 Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating
3 Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from
4 the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms
5 the Judgment and issues a remittitur.

6 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

7 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval
8 of the Settlement.

9 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final
10 Approval of the Settlement.

11 1.22. "Gross Settlement Amount" means Four Hundred Thousand Dollars and Zero Cents
12 (\$400,000.00) which is the total amount Defendant agrees to pay under the Settlement except as
13 provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class
14 Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class
15 Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.

16 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of
17 the Net Settlement Amount calculated according to the number of Workweeks worked during the
18 Class Period.

19 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25%
20 of the PAGA Penalties calculated according to the number of pay periods worked during the PAGA
21 Period.

22 1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.

23 1.26. "LWDA" means the California Labor and Workforce Development Agency, the
24 agency entitled, under Labor Code section 2699, subd. (i).

25 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA
26 under Labor Code section 2699, subd. (i).

27 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following
28 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA

1 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
2 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid
3 to Participating Class Members as Individual Class Payments.

4 1.29. "Non-Participating Class Member" means any Class Member who opts out of the
5 Settlement by sending the Administrator a valid and timely Request for Exclusion.

6 1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee
7 worked for Defendant for at least one day during the PAGA Period.

8 1.31. "PAGA Period" means the period from September 29, 2020 to December 8, 2022.

9 1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

10 1.33. "PAGA Notice" means Plaintiff's September 29, 2021 letter to Defendant and the
11 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

12 1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the
13 Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$2,500.00) and the 75% to
14 LWDA (\$7,500.00) in settlement of PAGA claims.

15 1.35. "Participating Class Member" means a Class Member who does not submit a valid and
16 timely Request for Exclusion from the Settlement.

17 1.36. "Plaintiff" means Alejandro Valdez, the named plaintiff in the Action.

18 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of
19 the Settlement.

20 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary
21 Approval and Approval of PAGA Settlement.

22 1.39. "Released Class Claims" means the claims being released as described in Paragraph
23 6.2 below.

24 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph
25 6.2 below.

26 1.41. "Released Parties" means: Defendant and each of its former and present directors,
27 officers, shareholders, owners, exempt employees, agents, trustees, representatives, attorneys,
28 insurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns.

1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43. "Response Deadline" means sixty (60) calendar days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.45. "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

2.1. On November 1, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for (1) Failure to Pay Overtime; (2) Failure to Provide Meal Periods; (3) Failure to Provide Rest Periods; (4) Failure to Pay Minimum Wages; (5) Failure to Pay Wages Timely Upon Termination; (6) Failure to Pay Timely Wages During Employment; (7) Failure to Provide Accurate Wage Statements; (8) Failure to Reimburse Business Expenses; and (9) Unfair Competition in Violation of Business & Professions Code Section 17200.

On September 29, 2021, Plaintiff filed a First Amended Complaint alleging the same nine (9) causes of action against Defendant and adding a tenth (10) cause of action for PAGA penalties. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint.") Defendant 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.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3. On January 12, 2023, the Parties participated in an all-day mediation presided over by

Marc J. Feder, Esq. which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery, information, documents and a sampling of data with respect to the alleged Class and PAGA members. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

2.6. The Parties, Class Counsel and Defense Counsel represent that they are aware of a pending action, captioned *Jason Casares, et al, v. C.H.I. Automart, Inc., et. al.*, Los Angeles Superior Court Case No. 22STCV34371 initiated on October 26, 2022 and pending in Superior Court of the State of California, County of Los Angeles, against the same Defendant. However, this pending action does not involve any Class Action or PAGA claims, and only alleges individual wage and hour violations.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay Four Hundred Thousand Dollars and Zero Cents (\$400,000.00) and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) 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 Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. 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:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than Five Thousand Dollars And Zero Cents (\$5,000.00) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a

Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third (33.3%), which is currently estimated to be \$133,333.33 and a Class Counsel Litigation Expenses Payment of not more than \$20,000. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class 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 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$8,000 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 \$8,000, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated

by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$10,000 to be paid from the Gross Settlement Amount, with 75% (\$7,500.00) allocated to the LWDA PAGA Payment and 25% (\$2,500.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$2,500.00 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.

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

1 **4. SETTLEMENT FUNDING AND PAYMENTS.**

2 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its
3 records to date, Defendant estimates there are 126 Class Members who collectively worked a total of
4 16,141 Workweeks, and 119 of Aggrieved Employees who worked a total 3,593 of PAGA Pay
5 Periods.

6 4.2. Class Data. Not later than seven (7) calendar days after the Court grants Preliminary
7 Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the
8 Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy
9 rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for
10 purposes of this Settlement and for no other purpose, and restrict access to the Class Data to
11 Administrator employees who need access to the Class Data to effect and perform under this
12 Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that
13 the Class Data omitted class member identifying information and to provide corrected or updated
14 Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant
15 must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use
16 best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted
17 Class Data.

18 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement
19 Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by
20 transmitting the funds to the Administrator no later than 30 calendar days after the Effective Date.

21 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds
22 the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments,
23 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment,
24 the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class
25 Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel
26 Litigation Expenses Payment and the Class Representative Service Payment shall not precede
27 disbursement of Individual Class Payments and Individual PAGA Payments.
28

1 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
2 Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage
3 prepaid. The face of each check shall prominently state the date (not less than 180 days after the date
4 of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the
5 void date. The Administrator will send checks for Individual Settlement Payments to all Participating
6 Class Members (including those for whom Class Notice was returned undelivered). The Administrator
7 will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-
8 Participating Class Members who qualify as Aggrieved Employees (including those for whom Class
9 Notice was returned undelivered). The Administrator may send Participating Class Members a single
10 check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing
11 any checks, the Settlement Administrator must update the recipients' mailing addresses using the
12 National Change of Address Database.

13 4.4.2. The Administrator must conduct a Class Member Address Search for all other
14 Class Members whose checks are returned undelivered without USPS forwarding address. Within 7
15 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding
16 address provided or to an address ascertained through the Class Member Address Search. The
17 Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks
18 are returned as undelivered. The Administrator shall promptly send a replacement check to any Class
19 Member whose original check was lost or misplaced, requested by the Class Member prior to the void
20 date.

21 4.4.3. For any Class Member whose Individual Class Payment check or Individual
22 PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit
23 the funds represented by such checks to the California Controller's Unclaimed Property Fund in the
24 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
25 California Code of Civil Procedure Section 384, subd. (b).

26 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments
27 shall not obligate Defendant to confer any additional benefits or make any additional payments to
28 Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

1 **6. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross
2 Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual
3 Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released
4 Parties as follows:

5 6.1 Plaintiff's Release. Plaintiff and his respective former and present spouses,
6 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and
7 discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class
8 Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged,
9 based on the facts contained, in the Operative Complaint, including, but not limited to (1) Failure to
10 Pay Overtime (Cal. Lab. Code §§ 510 and 1198); (2) Failure to Provide Meal Periods (Cal. Lab. Code
11 §§ 226.7 and 512(a)); (3) Failure to Provide Rest Periods (Cal. Lab. Code § 226.7); (4) Failure to Pay
12 Minimum Wages (Cal. Lab. Code §§ 1194, 1197 and 1197.1); (5) Failure to Pay Wages Timely Upon
13 Termination (Cal. Lab. Code §§ 201, 202 and 203); (6) Failure to Pay Timely Wages During
14 Employment (Cal. Lab. Code §§ 204 and 210); (7) Failure to Provide Accurate Wage Statements (Cal.
15 Lab. Code § 226(a) and IWC Wage Order); (8) Failure to Reimburse Business Expenses (Cal. Lab.
16 Code §§ 2800 and 2802); (9) Unfair Competition in Violation of Business & Professions Code Section
17 17200; and (10) all claims under California's Private Attorneys General Act of 2004 (Cal. Lab. Code
18 §§ 2699 et seq.) and (b) all PAGA claims that were, or reasonably could have been, alleged based on
19 facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action
20 and released under 6.2, below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any
21 claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment
22 benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any
23 time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may
24 discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or
25 believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all
26 respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

27 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
28 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and

benefits, if any, of section 1542 of the California Civil Code, which reads:

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.

6.2 Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action [including, but not limited to (1) Failure to Pay Overtime (Cal. Lab. Code §§ 510 and 1198); (2) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 512(a)); (3) Failure to Provide Rest Periods (Cal. Lab. Code § 226.7); (4) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1194, 1197 and 1197.1); (5) Failure to Pay Wages Timely Upon Termination (Cal. Lab. Code §§ 201, 202 and 203); (6) Failure to Pay Timely Wages During Employment (Cal. Lab. Code §§ 204 and 210); (7) Failure to Provide Accurate Wage Statements (Cal. Lab. Code § 226(a) and IWC Wage Order); (8) Failure to Reimburse Business Expenses (Cal. Lab. Code §§ 2800 and 2802); (9) Unfair Competition in Violation of Business & Professions Code Section 17200; and (10) all claims under California's Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2699 et seq.). Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

6.3 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are 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 and ascertained in the course of the Action including, but not limited to (1) Failure to Pay Overtime (Cal. Lab. Code §§ 510 and 1198); (2) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 512(a)); (3) Failure to Provide Rest Periods (Cal. Lab. Code § 226.7); (4) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1194, 1197 and 1197.1); (5) Failure to Pay Wages Timely Upon Termination (Cal. Lab. Code §§ 201, 202 and 203); (6) Failure to Pay Timely Wages During Employment (Cal. Lab. Code §§ 204 and 210); (7) Failure to Provide Accurate Wage Statements (Cal. Lab. Code § 226(a) and IWC Wage Order); (8) Failure to Reimburse Business Expenses (Cal. Lab. Code §§ 2800 and 2802); (9) Unfair Competition in Violation of Business & Professions Code Section 17200; and (10) all claims under California’s Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2699 et seq.).

7. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

7.1 Defendant’s Declaration in Support of Preliminary Approval. Within 30 calendar days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Defendant shall aver that it is aware of a pending action, captioned *Jason Casares, et al, v. C.H.I. Automart, Inc., et. al.*, Los Angeles Superior Court Case No. 22STCV34371 initiated on October 26, 2022, and pending in Superior Court of the State of California, County of Los Angeles, against the same Defendant. However, this pending action does not involve any Class Action or PAGA claims, and only alleges individual wage and hour violations.

7.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the

1 Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its
2 willingness to serve; competency; operative procedures for protecting the security of Class Data;
3 amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts
4 relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent
5 of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration
6 from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any
7 actual or potential conflicts of interest with Class Members, and the Administrator; (v) a signed
8 declaration from each Class Counsel firm attesting to its competency to represent the Class Members;
9 its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations
10 (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)),
11 this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties’
12 Agreement showing all modifications made to the Model Agreement ready for filing with the Court;
13 and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the
14 Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are
15 not aware of any other pending matter or action asserting claims that will be extinguished or adversely
16 affected by the Settlement.

17 7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
18 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than
19 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for
20 Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary
21 Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the
22 Administrator.

23 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
24 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense
25 Counsel will expeditiously work together on behalf of the Parties by meeting in person or by
26 telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
27 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
28 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in

1 person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's
2 concerns.

3 **8. SETTLEMENT ADMINISTRATION.**

4 8.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc.
5 ("ILYM") to serve as the Administrator and verified that, as a condition of appointment, ILYM agrees
6 to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement
7 in exchange for payment of Administration Expenses. The Parties and their Counsel represent that
8 they have no interest or relationship, financial or otherwise, with the Administrator other than a
9 professional relationship arising out of prior experiences administering settlements.

10 8.2 Employer Identification Number. The Administrator shall have and use its own
11 Employer Identification Number for purposes of calculating payroll tax withholdings and providing
12 reports state and federal tax authorities.

13 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that
14 meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section
15 468B-1.

16 8.4 Notice to Class Members.

17 8.4.1 No later than three (3) business days after receipt of the Class Data, the
18 Administrator shall notify Class Counsel that the list has been received and state the number of Class
19 Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

20 8.4.2 Using best efforts to perform as soon as possible, and in no event later than 14
21 days after receiving the Class Data, the Administrator will send to all Class Members identified in the
22 Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice [with Spanish
23 translation, if applicable] substantially in the form attached to this Agreement as Exhibit A. The first
24 page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class
25 Payment and/or Individual PAGA Payment payable to the Class Member, and the number of
26 Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing
27 Class Notices, the Administrator shall update Class Member addresses using the National Change of
28 Address database.

1 8.4.3 Not later than 3 business days after the Administrator's receipt of any Class
2 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using
3 any forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
4 the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the
5 most current address obtained. The Administrator has no obligation to make further attempts to locate
6 or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7 8.4.4 The deadlines for Class Members' written objections, Challenges to
8 Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days
9 beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-
10 mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed
11 Class Notice.

12 8.4.5 If the Administrator, Defendant or Class Counsel is contacted by or otherwise
13 discovers any persons who believe they should have been included in the Class Data and should have
14 received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and
15 in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree,
16 such persons will be Class Members entitled to the same rights as other Class Members, and the
17 Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise
18 options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates
19 in the Class Notice, whichever are later.

20 8.5 Requests for Exclusion (Opt-Outs).

21 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
22 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion
23 not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for
24 Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class
25 Member or his/her representative that reasonably communicates the Class Member's election to be
26 excluded from the Settlement and includes the Class Member's name, address and email address or
27 telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked
28 by the Response Deadline.

1 8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it
2 fails to contain all the information specified in the Class Notice. The Administrator shall accept any
3 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person
4 as a Class Member and the Class Member's desire to be excluded. The Administrator's determination
5 shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason
6 to question the authenticity of a Request for Exclusion, the Administrator may demand additional
7 proof of the Class Member's identity. The Administrator's determination of authenticity shall be final
8 and not appealable or otherwise susceptible to challenge.

9 8.5.3 Every Class Member who does not submit a timely and valid Request for
10 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits
11 and bound by all terms and conditions of the Settlement, including the Participating Class Members'
12 Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class
13 Member actually receives the Class Notice or objects to the Settlement.

14 8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is
15 a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right
16 to object to the class action components of the Settlement. Because future PAGA claims are subject
17 to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved
18 Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are
19 eligible for an Individual PAGA Payment.

20 8.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after
21 the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class
22 Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any)
23 allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation
24 by communicating with the Administrator via fax, email or mail. The Administrator must encourage
25 the challenging Class Member to submit supporting documentation. In the absence of any contrary
26 documentation, the Administrator is entitled to presume that the Workweeks contained in the Class
27 Notice are correct so long as they are consistent with the Class Data. The Administrator's
28 determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and

not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

8.7 Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

8.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.8 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.

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5

1 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall
2 email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying
3 information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion
4 List”); (b) the names and other identifying information of Class Members who have submitted invalid
5 Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether
6 valid or invalid).

7 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written
8 reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class
9 Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether
10 valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received
11 and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments
12 (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity
13 of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

14 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority
15 to address and make final decisions consistent with the terms of this Agreement on all Class Member
16 challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall
17 be final and not appealable or otherwise susceptible to challenge.

18 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by which
19 Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will
20 provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court
21 attesting to its due diligence and compliance with all of its obligations under this Agreement,
22 including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered,
23 the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for
24 Exclusion from Settlement it received (both valid or invalid), the number of written objections and
25 attach the Exclusion List. The Administrator will supplement its declaration as needed or requested
26 by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s
27 declaration(s) in Court.

28 8.8.6 Final Report by Settlement Administrator. Within 10 calendar days after the

1 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide
2 Class Counsel and Defense Counsel with a final report detailing its disbursements by employee
3 identification number only of all payments made under this Agreement. At least 15 calendar days
4 before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and
5 Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all
6 payments required under this Agreement. Class Counsel is responsible for filing the Administrator's
7 declaration in Court.

8 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE** Based on its records, Defendant
9 estimates that, as of the date of this Settlement Agreement, (1) there are 126 Class Members and
10 16,141 Total Workweeks during the Class period and (2) there were 119 Aggrieved Employees who
11 worked 3,593 Pay Periods during the PAGA Period.

12 Should the qualifying Workweeks (any workweek in which a Class Member worked at least
13 one shift) worked by the Class Members during this period ultimately increase by more than 10% (i.e.,
14 by more than 1,614 Workweeks), Defendants shall increase the Gross Settlement Amount on a pro-
15 rata basis equal to the percentage increase in the number of Workweeks worked by the Class Members
16 above 10%. For example, if the number of Workweeks increases by 11% to 17,917 Workweeks for
17 the Class Period, the Gross Settlement Amount will increase by 1%.

18 **10. DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion
19 identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may, but is
20 not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws,
21 the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will
22 have any further obligation to perform under this Agreement; provided, however, Defendant will
23 remain responsible for paying all Settlement Administration Expenses incurred to that point.
24 Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven
25 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have
26 no effect.

27 **11. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
28 Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that

1 includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a
2 Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”).
3 Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to
4 filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and
5 confer in person or by telephone, and in good faith, to resolve any disagreements concerning the
6 Motion for Final Approval.

7 11.1 Response to Objections. Each Party retains the right to respond to any objection raised
8 by a Participating Class Member, including the right to file responsive documents in Court no later
9 that [five] court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the
10 Court.

11 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
12 Approval on any material change to the Settlement (including, but not limited to, the scope of release
13 to be granted by Class Members), the Parties will expeditiously work together in good faith to address
14 the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s
15 decision to award less than the amounts requested for the Class Representative Service Payment, Class
16 Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses
17 Payment shall not constitute a material modification to the Agreement within the meaning of this
18 paragraph.

19 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment,
20 the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i)
21 enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii)
22 addressing such post-Judgment matters as are permitted by law.

23 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
24 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
25 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective
26 counsel, and all Participating Class Members who did not object to the Settlement as provided in this
27 Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and
28 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 an objector 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.

11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

13. ADDITIONAL PROVISIONS.

13.1 No Admission of Liability, Class Certification 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 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action,

1 and Plaintiff reserves the right to move for class certification on any grounds available and to contest
2 Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action
3 will have no bearing on, and will not be admissible in connection with, any litigation (except for
4 proceedings to enforce or effectuate the Settlement and this Agreement).

5 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and
6 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is
7 filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another
8 person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly,
9 specifically or generally, to any person, corporation, association, government agency, or other entity
10 except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep
11 this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report
12 income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in
13 response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees
14 to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking
15 such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to,
16 directly or indirectly, initiate any conversation or other communication, before the filing of the Motion
17 for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to
18 this Agreement except to respond only that "the matter was resolved," or words to that effect. This
19 paragraph does not restrict Class Counsel's communications with Class Members in accordance with
20 Class Counsel's ethical obligations owed to Class Members.

21 13.3 No Solicitation. The Parties separately agree that they and their respective counsel and
22 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from
23 the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to
24 communicate with Class Members in accordance with Class Counsel's ethical obligations owed to
25 Class Members.

26 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
27 together with its attached exhibits shall constitute the entire agreement between the Parties relating to
28 the Settlement, superseding any and all oral representations, warranties, covenants, or inducements

1 made to or by any Party.

2 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
3 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
4 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its
5 terms, and to execute any other documents reasonably required to effectuate the terms of this
6 Agreement including any amendments to this Agreement.

7 13.6 Cooperation. The Parties and their counsel will cooperate with each other and use their
8 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
9 Settlement Agreement, submitting supplemental evidence and supplementing points and authorities
10 as requested by the Court. In the event the Parties are unable to agree upon the form or content of any
11 document necessary to implement the Settlement, or on any modification of the Agreement that may
12 become necessary to implement the Settlement, the Parties will seek the assistance of a mediator
13 and/or the Court for resolution.

14 13.7 No Prior Assignments. The Parties separately represent and warrant that they have not
15 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber
16 to any person or entity and portion of any liability, claim, demand, action, cause of action, or right
17 released and discharged by the Party in this Settlement.

18 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are
19 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon
20 as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
21 amended) or otherwise.

22 13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended,
23 modified, changed, or waived only by an express written instrument signed by all Parties or their
24 representatives, and approved by the Court.

25 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to
26 the benefit of, the successors of each of the Parties.

27 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be
28 governed by and interpreted according to the internal laws of the state of California, without regard to

1 conflict of law principles.

2 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
3 of this Agreement. This Agreement will not be construed against any Party on the basis that the Party
4 was the drafter or participated in the drafting.

5 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
6 entered during Action and in this Agreement relating to the confidentiality of information shall survive
7 the execution of this Agreement.

8 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal.
9 Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by
10 Defendant in connection with the mediation, other settlement negotiations, or in connection with the
11 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be
12 used in any way that violates any existing contractual agreement, statute, or rule of court. Not later
13 than 90 days after the date when the Court discharges the Administrator's obligation to provide a
14 Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and
15 electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of
16 the Administrator's obligation, Defendant makes a written request to Class Counsel for the return,
17 rather than the destructions, of Class Data.

18 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement is
19 inserted for convenience of reference only and does not constitute a part of this Agreement.

20 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall
21 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend
22 or federal legal holiday, such date or deadline shall be on the first business day thereafter.

23 13.17 Notice. All notices, demands or other communications between the Parties in
24 connection with this Agreement will be in writing and deemed to have been duly given as of the third
25 business day after mailing by United States mail, or the day sent by email or messenger, addressed as
26 follows:

27 To Plaintiff:

28 Jonathan M. Genish (jgenish@blackstonepc.com)
Miriam Schimmel (mschimmel@blackstonepc.com)
Joana Fang (jfang@blackstonepc.com)

Blackstone Law, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
(310) 622-4278

To Defendant:

Nicole Kamm (nkamm@fisherphillips.com)
Joel Moon (jmoon@fisherphillips.com)
Fisher & Phillips LLP
21600 Oxnard Street, Suite 650
Woodland Hills, CA 91367
(818) 230-4250

Cynthia Elkins (celkins@employer-law.com)
Elkins Employment Law
21860 Burbank Boulevard, Suite 630 North Building
Woodland Hills, CA 91367
(818) 598-6771

13.18 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.

13.19 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 CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: April ²⁶ __, 2023

PLAINTIFF



Alejandro Valdez

Dated: April __, 2023

C.H.I. AUTOMART, INC., DEFENDANT

Name: _____
Title: _____

Blackstone Law, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
(310) 622-4278

To Defendant:

Nicole Kamm (nkamm@fisherphillips.com)
Joel Moon (jmoon@fisherphillips.com)
Fisher & Phillips LLP
21600 Oxnard Street, Suite 650
Woodland Hills, CA 91367
(818) 230-4250

Cynthia Elkins (celkins@employer-law.com)
Elkins Employment Law
21860 Burbank Boulevard, Suite 630 North Building
Woodland Hills, CA 91367
(818) 598-6771

13.18 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.

13.19 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 CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: April __, 2023

PLAINTIFF

Alejandro Valdez

Dated: ^{4/25/2023} April __, 2023

C.H.I. AUTOMART, INC., DEFENDANT

DocuSigned by:

Robert Robertson

DCFAB5CEBE344E4...

Name: Robert Robertson

Title: OWNER

1 APPROVED AS TO FORM:

2
3 DATED: April __, 2023

BLACKSTONE LAW, APC

4
5 By: _____
6 Jonathan Genish
7 Miriam Schimmel
8 Joana Fang
9 Attorneys for Plaintiff

10 DATED: April __, 2023

FISHER & PHILLIPS, LLP

11
12 By: _____
13 Nicole Kamm
14 Joel Moon
15 Attorneys for Defendant

16 DATED: April 25, 2023

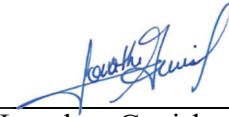
ELKINS EMPLOYMENT LAW

17
18 By: Cynthia Elkins
19 Cynthia Elkins
20 Attorneys for Defendant
21
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1 APPROVED AS TO FORM:

2
3 DATED: April 26, 2023

BLACKSTONE LAW, APC

4
5 By: 

Jonathan Genish
Miriam Schimmel
Joana Fang
Attorneys for Plaintiff

6
7
8
9 DATED: April 26, 2023

FISHER & PHILLIPS, LLP

10
11
12 By: 

Nicole Kamm
Joel Moon
Attorneys for Defendant

13
14
15 DATED: April __, 2023

ELKINS EMPLOYMENT LAW

16
17
18 By: _____

Cynthia Elkins
Attorneys for Defendant

PROOF OF SERVICE

Alejandro Valdez v. C.H.I. Automart, Inc. – Case No. 21STCV40168

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Yesenia Rosas, certify and declare as follows:

I am over eighteen years of age and not a party to the within action; my business address is 8383 Wilshire Blvd, Suite 745, Beverly Hills, California 90211. On June 6, 2023, I served a copy of the following document(s):

**DECLARATION OF JONATHAN M. GENISH IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**

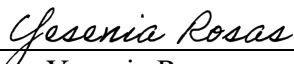
on the interested parties as follows:

Nicole Kamm Joel Moon FISHER & PHILLIPS LLP 21600 Oxnard Street, Suite 650 Woodland Hills, California 91367 Telephone: (818) 230-4250 / Fax: (818) 230-4251 E-mails: nkamm@fisherphillips.com jmoon@fisherphillips.com nmartinez@fisherphillips.com <i>Attorneys for Defendant C.H.I. Automart, Inc.</i>	Cynthia Elkins (SBN 125606) celkins@employer-law.com ELKINS EMPLOYMENT LAW 21860 Burbank Blvd. Suite 360 North Building Woodland Hills, Ca 91367 Telephone: (818) 598-6771 / Fax: (818) 598-6779 <i>Attorneys for Defendant C.H.I. Automart, Inc.</i>
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☒ **BY ELECTRONIC SERVICE (CASE ANYWHERE):** I caused said document(s) to be sent to the addressee(s) listed above via Case Anywhere. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **STATE** – I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 6, 2023 at Beverly Hills, California.


Yesenia Rosas