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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

JACKSON CHOU, aka JACKSON CHOM, on behalf of himself and on behalf of all persons similarly situated, and on behalf of himself, the Labor Workforce Development Agency, and similarly situated aggrieved current and former employees Plaintiff, v. THE DING DOCTOR, INC., doing business as DANNY'S DEALER SOLUTIONS and DANNY'S DETAIL; DANIEL MICHAEL CHAVES; GARY MICHAEL CHAVES; and DOES 1 through 20 inclusive Defendants.	Case No.: **CGC-22-597414** **DECLARATION OF PATRICK R. CO IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND REPRESENTATIVE ACTION SETTLEMENT** **Date: June 2, 2025** **Time: 11:00 a.m.** **Dept.: 304** **[Date and Time Approved by Dept. 304]** **Judge: Hon. Ethan P. Schulman** **Action Filed: January 3, 2022** **Trial Date: TBD**

I, Patrick R. Co, declare:

1. I am an attorney licensed to practice law in the state of California and have been admitted to practice before this Court. I am Counsel for Plaintiff Jackson Chou ("Plaintiff') in this action. I have personal knowledge of the matters stated herein and if called and sworn as a witness, I would and could competently testify under oath thereto. I am a member in good standing of the bar of the State of California.

2. I graduated from Loyola University of Chicago-School of Law in 1996, and have been licensed to practice in California since 1999. I have been in practice in California since that time uninterrupted, with a focus exclusively on civil litigation.

3. Prior to beginning my own firm, I was previously a Partner at Clapp, Moroney, Bellagamba, Vucinich, Beeman & Scheley, a San Francisco Bay Area civil litigation firm. In my 26 years of experience, I have litigated hundreds of matters to successful conclusion for San Francisco Bay Area individuals, small, medium, and large businesses, Fortune 500 companies, cities and towns, including their employees and police officers. My practice areas have included personal injury (including catastrophic injuries and wrongful death), consumer law, environmental law, police liability/Civil Rights, landlord-tenant disputes, and of course employment law, including discrimination and wage and hour litigation.

4. I have represented clients statewide, including San Francisco County, San Mateo County, Alameda County, Santa Clara County, Santa Cruz County, Marin County, Placer County, Sonoma County, Contra Costa County, Sacramento County, Mono County, and Los Angeles County. I am also admitted to practice and have represented clients in U.S. Federal Courts, including the United States Court of Appeal for the Ninth Circuit, as well as the United States District Courts for the Northern, Central, and Eastern Districts of California.

5. My current practice consists of approximately 95% employment law, with an emphasis on wage and hour litigation. A representative sample of my past and current wage and hour

litigation matters include cases of unpaid wages, unpaid overtime, meal break violations, rest period violations, wage statement violations, and for civil penalties pursuant to the California Private Attorney General Act. I have previously and am currently litigating numerous cases of wage and hour violations in addition to the present matter. I have previously been plaintiff's counsel in the following class and PAGA representative Actions: *Socorro Mata Cruz v. RTSF Ventures, Inc.*, Contra Costa County Superior Court Case Number C22-00538; *Henderson v. Amazon.com, Inc.*, Alameda County Superior Court Case Number 22CV018987; *Ayala v. Watt Petroleum, LLC*, Contra Costa County Superior Court Case Number C2402331. In addition, I have handled numerous individual wage and hour claims.

6. I agreed to represent the plaintiff in this matter, Jackson Chou, on a pure contingency fee basis. If this case had been lost, I would not have received any payment for my time and I would not have recouped from any source any of the time, fees, or costs I incurred in this litigation. My agreement with Mr. Velez, my co-counsel, did not change, alter, or otherwise affect that contingency fee arrangement. Thus, we have received no fees from our client, and Mr. Velez and I are pursuing our fees and costs incurred in this representative action solely on the basis of this motion.

7. Plaintiff, Jackson Chou, worked for Defendants as a car washer, car detailer, supervisor, and location manager at various locations throughout Northern and Southern California from approximately September 2016 to August 2021.

8. On October 25, 2022 Plaintiff filed a Private Attorney General Act notice with the Labor and Workforce Development Agency pursuant to California Labor Code 2699, et seq. On January 3, 2022, Plaintiff filed the current action on behalf of current and former non-exempt employees in California four years prior to the filing of the complaint through the present. The Complaint alleged: (1) FAILURE TO PAY OVERTIME WAGES; (2) FAILURE TO PROVIDE REST PERIODS; (3) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;

(4) FAILURE TO PAY ALL WAGES DUE UPON SEPARATION; (5) VIOLATION OF BUSINESS AND PROFESSIONS CODE; and (6) VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT.

9. Plaintiff's claims are premised primarily on the allegation that Defendants did not pay employees for failing to provide meal and rest period in accordance with the California Labor Code and Wage Orders, in that Defendants routinely failed to provide separate rest periods. Specifically, Plaintiff contends that The Ding Doctor maintained a meal and rest period policy whereby car washers, car detailers, supervisors, location managers, regional managers, and area managers only received a one hour break mid-shift, which purportedly encompassed an unpaid 30 minute lunch period and the required two unpaid rest breaks. Plaintiff alleges that the policy runs afoul of California statute and regulations requiring that rest breaks generally must fall in the middle of a four hour work period (See *Rodriguez v. E.M.E. Inc.* (2016) 246 CalApp.4th 1027, 1030. The policy effectively deprived the employees of a morning and afternoon restbreak.

10. Defendants denied the allegations and contended that employees were given separate rest periods and a meal break as required by law.

11. The Parties have undertaken significant investigation of the facts and law during the pendency of this action. Following the filing of the case, plaintiff Jackson Chou's individual claims were ordered to Arbitration pursuant to *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.

The parties agreed to mediate and as part of litigation and in preparation for mediation, the parties agreed on a discovery plan to efficiently and expeditiously identify the issues and potential damages. Formal and informal discovery and investigation was conducted which included: Plaintiff's three sets of requests for production of documents seeking documents responsive to 53 separate categories; Plaintiff's two sets of special interrogatories with 17 requests; Plaintiff's General and Employment California Judicial Council Form Interrogatories; and obtaining numerous declarations from current and former employees of defendants.

12. In addition, Plaintiff responded to two sets of requests for production of documents seeking documents responsive to 46 separate categories; responded to General and Employment Form Interrogatories; Plaintiff's full-day deposition; and review and analysis of over 60,000 pages of documents, which consisted of defendants' policies and procedures, employee manuals, and (the bulk of which) wage statement and time card information for roughly 25% of the employees identified as putative class members. The documents were painstakingly reviewed and analyzed by myself and my co-counsel, Martin Velez, Esq. to determine both liability and the maximum potential damages in this action as analyzed below.

13. On August 8, 2023, the Parties participated in a mediation before Michael D. Young, Esq., an experienced complex litigation mediator with Judicate West. Mr. Young actively assisted the Parties in settlement discussions; however despite best attempts by the mediator and the Parties, they failed to reached a settlement that day. The parties then proceeded to litigate plaintiff's individual claims in Arbitration.

Plaintiff vigorously pursued those individual claims in Arbitration through JAMS, before the Hon. Fred K. Morrison (ret.), and those individual claims eventually resolved in Arbitration. Afterwards, plaintiff embarked on pursuing the PAGA representative action.

However, settlement discussions through Mr. Young continued and the mediation and subsequent discussions ultimately resulted with the Parties reaching the basic terms of a settlement to resolve not only the PAGA claims but also the class representative claims, which inures to the greater benefit of the class employees. The settlement has now been finalized in the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims which has been signed by all parties, for which Plaintiff now seeks preliminary approval.

14. Class Counsel has conducted a thorough investigation into the facts of this case and has diligently pursued an investigation of the Class Members' claims against Defendants, potential liability, researched the applicable law, the potential defenses, reviewed voluminous relevant documents including Defendants' time and wage records, and conducted other investigation including numerous interviews of putative class members to determine the veracity and provability of the claims in this action.

15. Class Counsel has determined that unlike other wage and hour class and PAGA cases, the claims in this action primarily will rest on the believability of testimony of witnesses presented by the opposing sides, as opposed to an examination of wage and hour documents which might clearly exhibit violations. In this case, there will be conflicting testimony on whether breaks were allowed and were taken.

16. Plaintiff and Class Counsel have determined that there exists sharply disputed factual and legal issues in this action. Weighing the risks attending further prosecution, the expected conflicting testimony upon which liability would rest, the vagaries of a trial, and given that Defendants have denied, continue to deny, and will produce witnesses to deny each of the claims and contentions in this action, Class Counsel believes that it is in the best interest of the representative Plaintiff and the Class Members to settle this matter on the terms herein, and that given the above, those terms are fair and reasonable.

THE SETTLEMENT IS FAIR, JUST AND REASONABLE

17. To assist the Court with determining if the proposed settlement is within a range that is fair, reasonable, and adequate, Plaintiff's counsel analyzed the value of pleaded PAGA and class allegations presented in the proposed Second Amended Class Action and Representative Action Complaint, and have weighed that potential value against the evidence which could lead to a finding of no liability.

A. Rest Period Violations (Class Claims)

An employer has a statutory and regulatory obligation to authorize and permit non-exempt employees to take rest periods which, insofar as practicable, are in the middle of four hours of work or major fraction thereof. (Lab. Code, §§ 226.7, subd. (b); Wage Order Number 9, ¶ 12; 8 Cal. Code Regs., § 11090, ¶ 12.) If an employer fails to authorize and permit rest periods as required, the employer shall pay the employee one hour of pay at the employee's regular rate for each workday in which a violation occurred. (Lab. Code, § 226.7, subd. (c); Wage Order Number 9, ¶ 12; 8 Cal. Code Regs., § 11090, ¶ 12.)

Plaintiff's theory regarding rest break violations rests upon Plaintiff's allegations that The Ding Doctor required car washers, car detailers, supervisors, location managers, regional managers, and area managers to take a one hour break mid-shift, and did not provide any other breaks during the workday, to ensure sufficient workforce during busy hours. The estimated total premium pay for rest break violations was based on 57,000 pay periods, an average hourly rate of $16.00, and 10 rest break violations per pay period. The estimated potential maximum damages for unpaid premium pay for rest break violations totals $9,120,000.00, calculated as follows: 57,000 (pay periods during class period) x $16.00 (average hourly rate) x 10 (rest break violations per pay period) = $9,120,000.00.

B. Overtime and Minimum Wage Violations (Class Claims)

Plaintiff's theory of overtime and minimum wage violations rests upon Plaintiff's allegation that The Ding Doctor misclassified Plaintiff and other managers as exempt employees, and whether Defendants failed to pay those misclassified employees overtime compensation for employment in excess of eight hours in a day and in excess of forty hours in a week in violation of Labor Code sections 204, 510, 515, 1194, and 1198, 8 California Code of Regulations section 11070, paragraph 3, and section 11090, paragraph 3, and Industrial Welfare Commission Wage Order Number 7, paragraph 3, and Wage Order Number 9, paragraph 3.

The Ding Doctor represents that there are 80 location management positions. Based on our investigation, I estimate location managers, on average, worked five hours of unpaid overtime and earned on average $30 per hour. The estimated potential maximum damages for unpaid overtime totals $3,996,000.00, and is calculated as follows: 80 x 5 hours x $30 x 1.5 x 222 (workweeks in class period) = $3,996,000.00.

C. Off the Clock Work Violations - The occasions in which location managers or supervisors had their meal break interrupted to attend to issues raised by car dealerships also resulted in off the clock work. Based on our investigation, off the clock work violations were de minimis such as not to show a systematic policy and practice of off the clock work, making class certification on this claim difficult.

D. Wage Statement Violations (Class Claims)

An employer is required to furnish an employee with accurate itemized wage statements. (Lab. Code, § 226, subd. (a); Wage Order 9-2001(7).) Premium pay for rest break violations constitutes wages "that must be reported on statutorily required wage statements during employment." (*Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, 101, 121.) Thus, an employer's failure to report premium pay on itemized wage statements violates Labor Code section 226.

The wage statement information produced in discovery did not show that The Ding Doctor paid Plaintiff and putative class members premium pay for rest break violations, which Plaintiff contends makes the wage statements issued inaccurate. The damages for non-compliant wage statements total $7,140,000.00, and is calculated as follows: $4,000 (maximum statutory recovery under Labor Code section 226) x 1,785 (putative class members) = $7,140,000.00.

E. Waiting Time Violations (Class Claims)

Labor Code sections 201 and 202 specify that an employer must pay its employees all wages due immediately at the time of discharge, layoff, or resignation made with at least 72 hours' notice, or within 72 hours of resignation made without 72 hours' notice. (Lab. Code, §§ 201, 202.) When an employer fails to do so, the employer is required to pay waiting time penalties of up to 30 days' wages. (Lab. Code, § 203.) The wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced, but not to exceed 30 days. (Lab. Code, § 203.)

The waiting time penalties (which arise from the failure to pay premium wages for rest break violations) are calculated as follows: $16.00 x 8 hours x 30 days x 715 (former employees) = $2,574,000.00.

F. Unreimbursed Business Expenses - In discovery, plaintiff produced text messages from his personal cell phone, equivalent to between one and two text messages a month from his personal cell phone during his employment with The Ding Doctor. However, at his deposition, Plaintiff testified that The Ding Doctor provided him with a company cell phone. Based on Plaintiff's discovery responses and deposition testimony and our investigation into the claims in this action, I believe that the amount of unreimbursed business expenses is de minimis such as not to show a systematic policy and practice of failing to reimburse business expenses, making class certification on this claim difficult.

G. PAGA PENALTIES

California law is unclear to what extent stacking of penalties would be allowed. The recent amendments to PAGA prohibit stacking of certain penalties. Labor Code section 2699(h)(3)(i) now explicitly prohibits stacking of PAGA penalties for violations of sections 201-203, 204, and 226. I believe it is reasonable to assume that if the plaintiff were to prevail, maximum PAGA penalties of $5,700,000.00 might be awarded, calculated as follows:
57,000 pay periods x $100.00 penalty/pay period = $5,700,000.00.

18. Thus, Defendant's maximum potential exposure in the class action claims would be approximately $22,830,000.00; and the reasonable maximum exposure in the PAGA claims would be $5,700,000.00.

However, because the Defendant(s) employer utilized an arbitration agreement which contained a class action waiver, Plaintiff, absent consent by Defendants, would not be able to obtain class certification, and thus would not be able to obtain recovery for *any* class claims. Moreover, it would be in the discretion of the Court to reduce an award of PAGA penalties it found unjust, arbitrary, oppressive or confiscatory. Cal. Labor Code §2699(e)(2). Based on these factors, it is further reasonable to believe that a maximum realistic judgment if this case were to go to trial would be $2,850,000.00, which represents 50% of the total maximum estimated PAGA penalties recoverable in this action.

19. The proposed **$650,000.00 settlement** is approximately 22.8 percent of the total maximum realistic judgment. However, if Plaintiff continued litigating this matter, Class Members potentially could have received nothing if the Court had agreed with Defendants' positions especially in light of the volatility of this area of law and the aforementioned defenses. As such, Plaintiffs decision to settle this matter was in the best interest of the Class Members. The Class Settlement Amount is reasonable in light of the risks involved in this case including the prospect of a potential adverse summary adjudication ruling, class action waiver, anticipated conflicting testimony, defenses to the case, potential appeal, and elements of willfulness and/or injury required for certain penalties.

20. Plaintiffs' Counsel is convinced that the proposed settlement is in the best interest of the class based on the negotiations, a detailed knowledge of the issues present in this action, and detailed knowledge of the facts which will be presented at trial. The length and risks associated with a potential motion for summary judgment/adjudication, trial, and other normal perils of litigation that may have impacted the value of the claims were all weighed in reaching the

proposed settlement. In addition, the affirmative defenses asserted by Defendant, the prospect of a potential adverse summary adjudication ruling, uncertainty on certification issues, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals, were also carefully considered by Class Counsel in agreeing to the proposed settlement. In light of the above. the proposed Settlement is well within the "ballpark" of reasonableness and should be granted preliminary approval.

21. If approved, Class Members will receive timely payment and avoid the risk of an unfavorable judgment, thereby receiving nothing. Moreover, Class Members will have the opportunity to "opt out" of the settlement if they so choose.

22. The proposed settlement will allow the employees, many of them current employees, to receive a portion of their unpaid wages without risk of retaliation or having to file their own action, find an attorney, participate in the action, or incur the risk of costs if the action is unsuccessful.

23. My hourly rate in this action is $600.00, which is based on my 26 years of experience as an attorney in the San Francisco Bay Area and is reflective of the market rate for attorneys of similar experience and skill level in the community. In H*alal v. The Hospital Committee for the Livermore-Pleasanton Area*, Superior Court of California, County of Alameda, Case Number RG15757616, I was awarded an hourly rate of $450.00/hour in 2016. Since then, I have increased my hourly rate to $600.00, which is based on my experience practicing employment law in the San Francisco Bay Area, my discussions with colleagues practicing employment law regarding fee awards, and my knowledge of verdicts and fee awards in employment cases, and reflective of the hourly rates charged by attorneys and approved by courts for those at my level of experience who specialize in representing employees in the San Francisco Bay Area in class action and PAGA litigation.

24. I will submit a declaration with the motion for final approval detailing the hours billed in this action.

25. The proposed Settlement has been filed with the Labor and Workforce Development Agency (LWDA).

26. Class Counsel believes that the $40,000.00 PAGA allocation represents a meaningful settlement aimed at deterring non-compliance. (See *Davis v. Cox Communications California, LLC* (S.D. Cal. 2017) 2017 WL 1496407, * 1 [preliminarily approving $4,000 PAGA allocation in $275,000 settlement]; *Jack v. Hartford Fire Insurance Co.* (S.D. Cal. 2011) 2011 WL 4899942, * 6 [approving $3,000 PAGA allocation in $1,200,000 settlement]; *Hopson v. Hanesbrands Inc.* (N.D. Cal. 2009) 2009 WL 928133, * 9 [approving $1,500 LWDA allocation in $ 408,420.32 settlement].)

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed this 30th day of April 2025, at Half Moon Bay, California.

/s/ *Patrick R. Co*
Patrick R. Co, Esq.