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

LABRI J. MELZER, on behalf of the State of
California and other aggrieved persons,

Plaintiff,

v.

D. LONGO, LLC, a California Limited Liability
Company; PENSKE MOTOR GROUP, LLC, a
California Limited Liability Company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 21PSCV01025

PAGA REPRESENTATIVE ACTION

*[Assigned for all purposes to: Hon. Peter A.
Hernandez, Dept. O]*

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
PAGA SETTLEMENT**

*[Filed concurrently with: Plaintiff's Motion to
Approve PAGA Settlement; Declaration of
Labri J. Melzer; and [Proposed] Order
Granting PAGA Settlement]*

Date: November 29, 2022

Time: 8:30 a.m.

Dept.: O

Reservation ID: 816505986527

Complaint filed: December 7, 2021

Trial date: Not Set

DECLARATION OF JUSTIN F. MARQUEZ

I, Justin F. Marquez, declare as follows:

1. I am admitted, in good standing, to practice as an attorney in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC, counsel of record for Plaintiff Labri J. Melzer (“Plaintiff”). I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness.

2. This Declaration is submitted in support of Plaintiff's Motion to Approve PAGA Settlement.

Background

3. Defendants D. Longo, LLC and Penske Motor Group, LLC (“Defendants”) operate the world’s largest Toyota dealership headquartered in El Monte, California. Plaintiff worked for Defendants in El Monte, California as an hourly-paid, non-exempt employee from approximately August 2019 to approximately October 2020.

4. Plaintiff's PAGA claim stems from Defendants failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all earned wages twice per month, failure to maintain accurate records of hours worked and meal periods, failure to timely pay final wages, and failure to furnish accurate wage statements.

5. On October 1, 2021, Plaintiff provided notice to the California Labor & Workforce Development Agency (“LWDA”) and Defendants of the violations described above, as required by Labor Code § 2699.3(a)(1). Pursuant to Labor Code § 2699.3(a)(2)(A), the LWDA had 65 calendar days to notify Plaintiff and Defendants whether it intended to investigate the alleged violations. However, the LWDA did not do so.

Discovery and Investigation

6. After Plaintiff filed his complaint on December 6, 2021, the Parties engaged in extensive settlement discussions. To facilitate settlement, Defendants provided Plaintiff with

1 timekeeping and payroll data for a sampling of the aggrieved employees, and the applicable
2 policies in effect during the relevant time period. Thereafter, the Parties engaged in extensive
3 discussions about the factual and legal strengths (and weaknesses) of the claims and defenses.

4 7. On June 15, 2022, the Parties and their counsel participated in private mediation
5 with Lisa Klerman, Esq. The settlement negotiations were at arm's length and, although
6 conducted in a professional manner, were adversarial. The Parties went into the mediation
7 willing to explore the potential for a settlement of the dispute, but each side was also prepared
8 to litigate their or its position through trial and appeal if a settlement had not been reached.

9 8. Ultimately, a few days after an all-day mediation presided over by well-regarded
10 mediator Lisa Klerman, Esq., the Parties agreed to settle the PAGA claim for \$440,000.00,
11 which includes all persons who were engaged by Defendants as hourly employees in California
12 at any time from April 6, 2020 through the date that the Court enters the order granting approval
13 of the settlement, or August 15, 2022, whichever occurs sooner. There are approximately 732
14 aggrieved employees covered by the settlement. Plaintiff submitted the Settlement to the
15 LWDA on October 6, 2022, pursuant to Labor Code § 2699(1)(2). A true and correct copy of
16 the Settlement executed by the Parties, along with the confirmation that the Settlement was
17 submitted to the LWDA is attached to this Declaration as **Exhibit A**. Additionally, attached as
18 **Exhibit A to the Settlement Agreement** is the Settlement Notice that will be sent to the PAGA
19 Employees with payment after the Court enters a Judgement on its Order Approving the PAGA
20 Settlement.

21 9. Before the Settlement, Plaintiff's counsel conducted an investigation into the claims
22 alleged by Plaintiff, conducted legal research, and engaged in informal discovery. Based upon the
23 information obtained through discovery, Plaintiff's counsel was able to act intelligently and
24 effectively in negotiating the proposed Settlement.

25 **Assessment of Amount in Controversy and Risks of Continued Litigation**

26 10. Plaintiff and my firm remain confident of the merits of Plaintiff's claims. Plaintiff's
27 allegation that Defendants failed to pay Plaintiff and the aggrieved employees all of their owed
28 wages is based on Defendants' failure to: pay employees for work performed "off-the-clock." With

1 respect to the meal period allegation, Plaintiff alleges that Defendants required her and the other
2 aggrieved employees to work in lieu of taking meal periods. Although Plaintiff contends that this
3 allegation is meritorious, there is risk with this underlying claim, particularly because Defendants
4 implemented meal period waivers throughout the covered period. With respect to the rest period
5 allegation, Plaintiff contends that employees, including himself, were not provided with California-
6 compliant rest periods. Again, despite Plaintiff's contention that this allegation is credible, proving
7 rest period allegations is particularly difficult because rest periods do not have to be recorded and
8 Defendants can argue that the aggrieved employees chose to voluntarily forego their rest periods.

9 11. With regard to Plaintiff's wage statement claim, Defendants argue that the wage
10 statements issued to employees meet the requirements of Labor Code § 226(a). Defendants also
11 maintain that any alleged wage statement violation could not be shown to be "knowing and
12 intentional," and that Plaintiff cannot show that she or any other employee "suffer[ed] injury" as a
13 result of the alleged wage statement violations, as required by Labor Code § 226(e) for the
14 imposition of penalties.

15 12. Plaintiff believed there was a legitimate risk of the Court significantly reducing
16 penalties given the technical nature of the alleged violations. Without this settlement, the Parties
17 face preparation for trial, as well as extensive formal discovery efforts and further depositions. As
18 a result, the Parties would incur considerably more attorneys' fees and costs through trial. This
19 settlement avoids those risks and the accompanying expense. Thus, this factor favors settlement
20 approval.

21 13. Plaintiff believed that there was a further risk of the Court potentially reducing the
22 penalties and potentially sending the matter to individual arbitration given the ruling in the U.S.
23 Supreme Court case, *Viking River Cruises, Inc. v. Moriana* and Plaintiff having signed a purported
24 arbitration agreement. While Plaintiff believes that there is a legitimate argument that the Court
25 would have ruled in her favor, any contemplated Motion to Compel Arbitration by Defendant
26 would have increased the overall legal costs associated with this matter and potentially taken this
27 away from Plaintiff and the aggrieved employees. Moreover, in the event this case was compelled
28 to arbitration, Plaintiff and the other aggrieved employees would likely only be able to pursue

1 PAGA penalties on an individual basis, which would prevent most employees from receiving
2 money because the relatively high bar for pursuing an individual claim would likely not be worth
3 the relatively low payouts that employees could ultimately receive pursuant to their PAGA claims.
4 Additionally, since this was a PAGA-only action, this was the only action by which Plaintiff and
5 the aggrieved employees could seek any recourse through the Court's for Defendants' violation of
6 the Labor Code.

7 14. My expert determined that there were approximately 39,057 pay periods during the
8 relevant time period which presented issues with regard to unpaid wages, meal period violations,
9 and rest period violations. Applying the \$100 "initial violation" penalty for each initial pay
10 periods, and \$200 for each subsequent pay period, Defendants' potential PAGA exposure is
11 \$7,737,800 (based on 39,057 pay periods). However, Defendants' contention that the underlying
12 allegations lacked merit and the U.S. Supreme Court's ruling in *Viking River Cruises* which made
13 this PAGA-only action likely more difficult to pursue, led to Plaintiff discounting this maximum
14 exposure by 80% to account for the risk of not prevailing on the merits, and an additional 10% to
15 account for the Court's discretion to reduce penalties.

16 15. Using these estimated figures, Plaintiff predicted that the realistic total potential
17 recovery for the PAGA Employees and the LWDA would be approximately \$773,780. The
18 proposed Settlement of \$440,000 therefore represents **56.9%** of Plaintiff's reasonably forecasted
19 total recovery. In this case, continued litigation would delay payment to the LWDA and the PAGA
20 Employees as they await trial and, most likely, appellate proceedings. Furthermore, while Plaintiff
21 is confident in the merits of the case, a legitimate controversy exists as to each of the predicate
22 Labor Code violations. Additionally, following the ruling in *Viking River Cruises*, there is a
23 legitimate controversy as to whether Plaintiff can pursue this PAGA-only action in this forum and
24 whether Plaintiff, the aggrieved employees, and the State can seek civil penalties against
25 Defendants. The possibility that the Court finds no liability at the PAGA bench trial is also a risk.
26 In sum, when the risks of litigation, the burdens of proof necessary to establish liability, and the
27 probability of appeal of a favorable judgment are balanced against the merits of Plaintiff's claims,
28 it is clear that the settlement amount is fair. Further, because of the proposed Settlement, the

1 PAGA Employees will receive timely, guaranteed relief and will avoid the risk of an unfavorable
2 judgment. Plaintiff also recognizes that proving the amount of wages due to each employee would
3 be an expensive, time-consuming, and uncertain proposition.

4 16. If the Court approves the terms of the Settlement, each aggrieved employee's
5 payment will average approximately \$86.52 and approximately \$190,000 will go to the LWDA.
6 In reality, some employees will likely receive more, and others may receive less depending on the
7 length of their employment with Defendants.

8 **PAGA Representative Service Payment**

9 17. The Settlement provides for a Service Payment to Plaintiff in an amount not to
10 exceed \$10,000.00. (Settlement, § III(C).) The requested service award is intended to recognize:
11 (1) the substantial time and effort that Plaintiff has expended on behalf of the State and aggrieved
12 employees; (2) the risks faced by Plaintiff as a result of bringing this action; (3) the fact that
13 Plaintiff put the interests of the State of California and other aggrieved employees ahead of his
14 own; and (4) the substantial benefit conferred upon the State and the aggrieved employees as a
15 result of Plaintiff's actions.

16 18. Plaintiff has spent numerous hours performing tasks for this case, including, but not
17 limited to, the following: consulting with counsel over the telephone; searching for and producing
18 relevant documents; reviewing documents produced by Defendants and settlement documents;
19 keeping informed of the developments in the case; and participating in decisions concerning the
20 case, including settlement. As a result of his efforts, the LWDA and about 732 aggrieved
21 employees will receive compensation for civil penalties for underpaid wages and other wage and
22 hour violations.

23 19. Plaintiff put herself at significant risk in pursuing this action on behalf of the State,
24 as serving as a Plaintiff in a representative action could affect his prospects for future employment.
25 Plaintiff also placed herself at substantial risk because, if Defendants were to prevail in this action,
26 Plaintiff could be liable for Defendant's costs and attorneys' fees.

27 ///

28 ///

20. In short, this action would not have been possible without the aid of Plaintiff, who put her own time and effort into this litigation, sacrificed the value of her individual claims by entering into a general release of all known and unknown claims, and placed herself at risk for the sake of the State and the aggrieved employees.

Attorneys' Fees And Costs

21. The Settlement provides for a payment of attorneys' fees in the amount of \$146,666.67 and up to \$20,000 in costs to Plaintiff's counsel. As of the filing date, Plaintiff's counsel's total lodestar is \$118,675 which is based upon 184.5 hours of attorney and staff time at customary hourly rates. In addition, Plaintiff's counsel incurred \$12,919.62 in litigation costs. Plaintiff's counsel was required to expend the funds prosecuting this case to a successful resolution on, among other things, court filing fees, document service, postage, and copying. Because these costs are reasonable, Plaintiff's counsel respectfully requests that the Court approve the payment. Under these circumstances, Plaintiff's counsel is requesting a lodestar of about 1.2. Thus, Plaintiff's request for \$146,666.67 in attorneys' fees and costs is reasonable under the lodestar method.

22. The efforts expended by Plaintiff's counsel to achieve this excellent result include, but are not limited to, the following: interviews with Plaintiff and review of documents provided by Plaintiff and Defendants; preparing and revising the Complaint; filing of the PAGA complaint; investigating and researching the claims; analyzing the timekeeping and payroll records produced by Defendants in advance of mediation; preparing a mediation brief; participating in mediation; drafting, negotiating, and revising the Settlement Agreement; communicating with the proposed Settlement Administrator; and drafting this Motion and supporting papers.

23. The regular and customary practice at Wilshire Law Firm, PLC is for all attorneys to maintain contemporaneous time records setting forth the amount of time spent (rounded to the nearest 0.1 hour) on each task in each case, with explanatory descriptions of each task performed. My colleagues and I followed this practice throughout this litigation. To calculate my firm's lodestar for this case, I reviewed the time records and exercised discretion in eliminating excessive entries. Using these time records, my office derived the following summary chart of timekeeping

activities of the attorneys and staff working on this case:

Person	Role	Hours	Rate	Lodestar
Justin F. Marquez	Senior Partner (13+ years)	45	\$850	\$38,250
Benjamin H. Haber	Associate Attorney (6 th Year)	65	\$650	\$42,250
Daniel J. Kramer	Associate Attorney (6 th Year)	60	\$600	\$36,000
Min Jee Kim	Paralegal	11.5	\$150	\$1,725
Ashley Narinyans	Paralegal	3	\$150	\$450
Total:				\$118,675

24. There are additional hours devoted by me (and by my colleagues) to this litigation that are not reflected in Plaintiff's Counsel's request for attorneys' fees.

25. We can provide complete, detailed billing records in the event the Court requests them, but would request the opportunity to redact attorney-client privileged information and any other privileged information.

26. Additional time will be required by Plaintiff's Counsel to monitor the settlement and respond to inquiries and oversee administration of the settlement and distribution of the fund. I estimate that my office will commit no less than 10 hours to those tasks and have included those hours above.

27. As of the drafting of this Motion, my office has incurred \$12,919.62 in expenses litigating this action. These expenses were reasonably necessary to the litigation and were actually incurred by my office. They should be reimbursed in full, up to the maximum amount allowed in the Settlement Agreement. Attached as **Exhibit B** to this declaration is a breakdown of costs incurred by my office. Additionally, we anticipate incurring \$300.00 in anticipated future costs for filing fees, messenger costs, and copying costs following the Court's Order re: Plaintiff's Motion to Approve PAGA Settlement, and request reimbursement of such as well.

Plaintiff's Counsel's Experience

28. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World Report as one of the nation's Best Law Firms in 2022 and is comprised of over 55 attorneys and

1 over 300 employees. Wilshire Law Firm, PLC is actively and continuously practicing in
2 employment litigation, representing employees in both individual and class actions in both state
3 and federal courts throughout California.

4 29. Wilshire Law Firm, PLC is qualified to handle this Litigation because its attorneys
5 are experienced in litigating Labor Code violations in both individual, class action, and
6 representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling,
7 numerous wage and hour class action lawsuits, as well as class actions involving consumer rights
8 and data privacy litigation.

9 30. I graduated from the University of California, Los Angeles's College Honors
10 Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi*
11 *Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at
12 Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in
13 2008.

14 31. My practice is focused on advocating for the rights of consumers and employees in
15 class action litigation and appellate litigation. I am currently the primary attorney in charge of
16 litigating several class action and PAGA cases in state and federal courts across the United States.

17 32. I have received numerous awards for my legal work. From 2017 to 2020, Super
18 Lawyers selected me as a "Southern California Rising Star," and in 2022, I was selected as a
19 "Southern California Super Lawyer." I was recognized by Best Lawyers as one of the "Best
20 Lawyers in America" in 2023. In 2016 and 2017, the National Trial Lawyers selected me as a
21 "Top 40 Under 40" attorney. I am also rated 10.0 ("Superb") by Avvo.com.

22 33. I am on the California Employment Lawyers Association ("CELA")'s Wage and
23 Hour Committee and Mentor Committee, and I was selected to speak at CELA's 2019 Advanced
24 Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively
25 mentored young attorneys through CELA's mentorship program.

26 34. I am also a past member of the Consumer Attorneys of California ("CAOC"). In
27 2020, I was selected for a position on CAOC's Board of Directors. I am also a past member of
28 CAOC's Diversity Committee, and I helped assist the CAOC in defeating bills that harm

employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC, in defeating AB 443, which proposed legislation that sought to limit the enforceability of California Labor Code § 226.

35. As the attorney responsible for day-to-day management of this matter at the Wilshire Law Firm, PLC, I have over thirteen years of experience with litigating wage and hour class and PAGA actions. Over the last thirteen years, I have managed and assisted with the litigation and settlement of several wage and hour class actions. In those class actions, I performed similar tasks as those performed in the course of prosecuting this action. My litigation experience includes:

- a. I served as lead or co-lead in negotiating class action settlements worth over \$10 million in gross recovery to class members for each year since 2020, including over \$30 million in 2022.
- b. I was part of the team of attorneys that prevailed in *Moore v. Centrelake Medical Group, Inc.* (2022) 83 Cal.App.5th 515, the first California appellate decision in a data breach class action holding that consumer plaintiffs adequately alleged injury in fact under the benefit of the bargain theory and monitoring-costs theory.
- c. In 2022, Top Verdict recognized Wilshire Law Firm and myself for having one case in the Top 20 Labor & Employment Settlements (including number 19 for the \$1.6 million settlement in *Moreno v. Pretium Packaging, L.L.C.*) and four additional cases in the Top 50 Labor & Employment Settlements (numbers 27, ,30, 33, and 37).
- d. To my knowledge, I am the only attorney to appear on each of the following *Top Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- e. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by winning class certification on behalf of hundreds of thousands of consumers for misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct. C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).

- 1 f. As lead counsel, I prevailed against Bank of America by: winning class certification
2 on behalf of thousands of employees for California Labor Code violations; defeating
3 appellate review of the court’s order certifying the class; defeating summary
4 judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.*
5 (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019
6 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,
7 2018).). The decision certifying the class in *Frausto* is also discussed in *Class*
8 *Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call*
9 *Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed.
10 3d Art. 8.
- 11 g. I was the primary author of the class certification and expert briefs in *ABM*
12 *Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action
13 for over 40,000 class members for off-the-clock, meal period, split shift, and
14 reimbursement claims. *ABM Industries Overtime Cases* is the first published
15 California appellate authority to hold that an employer’s “auto-deduct policy for
16 meal breaks in light of the recordkeeping requirements for California employers is
17 also an issue amenable to classwide resolution.” (*Id.* at p. 310.)¹ Notably, the Court
18 of Appeal also held that expert analysis of timekeeping records can also support the
19 predominance requirement for class certification. (*Id.* at p. 310-11.) In 2021, the
20 case settled for \$140 million, making it one of the largest ever wage and hour class
21 action settlements for hourly-paid employees in California.
- 22 h. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d
23 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims
24 under California’s Private Attorney Generals Act (“PAGA”) cannot be used to
25 calculate the amount in controversy under the Class Action Fairness Act (“CAFA”).
26 This case is cited in several leading treatises such as *Wright & Miller’s Federal*

27 ¹ As a California district court observed before the *ABM Industries Overtime* decision,
28 “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE Connectivity*
Networks, Inc. (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, *7.)

Practice & Procedure, and *Newberg on Class Actions*. In October 2016, the U.S. Supreme Court denied review of a case that primarily concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus support from a brief authored by Andrew J. Pincus.² Considering that leading Supreme Court practitioners from the class action defense bar were very motivated in undermining *Yocupicio* case, but failed, this demonstrates the national importance of the *Yocupicio* decision.

- i. On December 13, 2018, the United States District Court granted final approval of the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing so, the Court found: “Class Counsel’s declarations show that the attorneys are experienced and successful litigators.” (*Id.* at p. *10.)
- j. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a reported decision permitting class-wide discovery even though the employer has a lawful policy because “[t]he fact that a company has a policy of not violating the law does not mean that the employees follow it, which is the issue here.” The court also ordered defendant to pay for the cost of *Belaire-West* notice.
- k. In 2013, I represented a whistleblower that reported that his former employer was defrauding the State of California with the help of bribes to public employees. The case, a false claims (*qui tam*) action, resulted in the arrest and criminal prosecution of State of California employees by the California Attorney General’s Office.
- l. In 2013, I was part of a team of attorneys that obtained conditional certification for over 2,000,000 class members in a federal labor law case for misclassification of independent contractors that did crowdsourced work on the Internet, *Otey v. CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the following pro-plaintiff reported decisions:

² <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

1. 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding that an unaccepted Rule 68 offer doesn't moot plaintiff's claims, and granting plaintiff's motion to strike defendant's affirmative defenses based on *Twombly/Iqbal*).
2. 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order granting conditional collective certification).
3. 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the magistrate judge's discovery ruling which held that "evidence of other sources of income is irrelevant to the question of whether a plaintiff is an employee within the meaning of the FLSA").
4. 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting broad discovery because "an FLSA plaintiff is entitled to discovery from locations where he never worked if he can provide some evidence to indicate company-wide violations").

m. From 2012 to 2013, I was part of a team of attorneys that obtained class certification for over 60,000 class members for off-the-clock claims, *Linares v. Securitas Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also successfully opposed subsequent appeals to the California Court of Appeal and California Supreme Court.

36. Benjamin H. Haber is a sixth-year Associate Attorney at Wilshire Law Firm, PLC. He was admitted to practice law in the State of California and the Central, Southern, Eastern, and Northern Districts of California. He graduated from the University of California, Los Angeles, with a Bachelor of Arts in Political Science, and received his Juris Doctor from the University of California, Hastings College of the Law in 2016. During law school, he was a member of the executive board for the Hastings Law Journal and a student mediator at the San Francisco Superior Court, Small Claims Division. Since graduating law school, he has focused his legal work primarily on wage and hour class action litigation. His current contingent billing rate for this case is \$650 per hour, which is consistent with his level of experience in the wage and hour arena.

37. Daniel J. Kramer is a sixth-year Associate Attorney at Wilshire Law Firm, PLC. He was admitted to practice law in the State of California and the Central, Eastern, and Northern Districts of California. He graduated from Stanford University with a Bachelor of Arts in History and Political Science, and received his Juris Doctor from Loyola Law School, Los Angeles in 2016. During law school, he was a research editor for the Loyola of Los Angeles International and Comparative Law Review. Before joining Wilshire Law Firm, he practiced briefly at a firm that focused on municipal law and code enforcement and then moved to a respected plaintiff-side firm to practice wage and hour class action litigation. He has several years of work experience litigating wage and hour class actions. His current contingent billing rate for this case is \$600 per hour, which is consistent with his level of experience.

38. My current contingent billing rate of \$850 per hour is consistent with my practice area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received, legal market and accepted hourly rates:

a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of wage-and-hour class actions that I opposed when litigating wage-and-hour class actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435, 8th Year - \$455. I am a 14th year attorney and Senior Partner, with most of my experience in class action litigation as a primary practice area. Having successfully briefed and argued a published appeal in the Ninth Circuit Court of Appeals involving CAFA and PAGA, having experience certifying large class actions (including *ABM Industries Overtime Cases*, which was decided on appeal), and having received numerous awards for my legal work, my hourly rate should be adjusted upward.

b. On May 6, 2022 the Hon. Jay A. Garcia-Gregory of the United States District Court in Puerto Rico approved my \$850 hourly rate when he granted final approval of the

class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-cv-01811-JAG, Dkt. 57 (U.S. Dist. Ct. P.R. May 6, 2022).

- c. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court approved my \$800 hourly rate when he granted final approval of the class action settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-2019-01066522-CU-OE-CXC.
- d. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District Court granted final approval of the \$1,600,000 class action settlement in *Carlos Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the Court approved my then \$750 hourly rate after finding it was “reasonable, given the qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)
- e. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior Court approved my \$750 hourly rate when he granted final approval of the class action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No. 19STCV32396.

39. Plaintiff’s Counsel elected to bear the contingency risk of this litigation for the benefit of the aggrieved employees, as well as for the State of California (who elected not to take the case after receiving the PAGA notice).

40. The risk to my office has been very significant, particularly if we would not be successful in pursuing this class action. In that case, we would have been left with no compensation for all the time taken in litigating this case. Indeed, we have taken on a number of class action cases that have resulted in thousands of attorney hours being expended and ultimately having certification denied or the defendant company going bankrupt. The contingent risk in these types of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

41. In the high-risk, high-cost practice of class action and PAGA litigation, Wilshire Law Firm, PLC has endured financial losses in several of its cases. I believe that the particular risk

1 of taking on this high-cost, high-risk case supports an upward adjustment of the lodestar
2 calculation.

3 42. Because most individuals cannot afford to pay for representation in litigation on
4 an hourly basis, Wilshire Law Firm, PLC represents all of its employment law clients on a
5 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless
6 we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is
7 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or
8 her case, we cannot afford to represent an individual employee on a contingency basis if, at the
9 end of our representation, we receive less than the amount of attorneys' fees negotiated with
10 defendant. It is therefore essential that we recover our requested fees when we settle cases if we
11 are to remain in practice so as to be able to continue representing other individuals in civil rights
12 employment disputes.

13 43. I am informed and believe that the efforts of my office have resulted in substantial
14 benefits to the aggrieved employees and the State of California. Through the efforts of my office
15 and Plaintiff in this case, a fair and reasonable resolution has been reached. I am informed and
16 believe that, without the efforts of my office, the Labor Code and Wage Order violations alleged
17 in the complaint would have gone completely unremedied. The attorneys' fees award provided for
18 in the settlement is therefore reasonable given the result achieved.

19 44. The Parties propose using CPT Group, Inc. to administer the Settlement. The
20 Settlement Administrator Costs in the amount of \$10,000 are reasonable, given the tasks to be
21 performed by the Settlement Administrator, including, but not limited to, the following duties:
22 mailing and re-mailing (if necessary) checks to approximately 732 PAGA Employees and the
23 LWDA; establishing a Qualified Settlement Fund; preparing and submitting to PAGA Employees
24 and government entities all appropriate tax filings and forms; distributing the PAGA
25 Representative Service Payment and attorneys' fees and costs; keeping the Parties timely apprised
26 of the performance of all obligations under the Agreement; and voiding uncashed or undeliverable
27 checks to issue those funds to the California Controller's Unclaimed Property Fund. Plaintiff
28 respectfully requests that the Court approve the requested costs. A true and correct copy of CPT

1 Group, Inc.'s estimate for administration costs is attached to this Declaration as **Exhibit C**.

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

4 Executed on November 2, 2022, at Los Angeles, California.

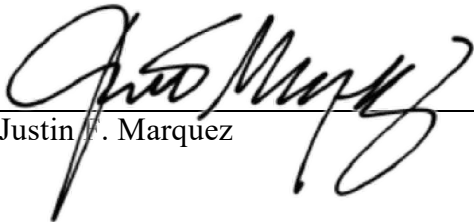
5
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7 Justin F. Marquez
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Exhibit A

JOINT STIPULATION OF SETTLEMENT AND RELEASE

This Memorandum of Agreement is made between proposed plaintiff Labri J. Melzer (“Plaintiff”), on behalf of herself and on behalf of the State of California, on the one hand, and proposed defendants D. Longo, LLC and Penske Motor Group, LLC (together, “Defendants”), on the other, subject to approval by a Court in accordance with California Labor Code Section 2699(l)(2), and subject to the following terms and conditions:

I. DEFINITIONS.

The following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- A. “Action” means the civil action under PAGA entitled *Labri J. Melzer v. D. Longo, LLC; Penske Motor Group, LLC*, Los Angeles Superior Court Case No. 21PSCV01025.
- B. “Agreement,” “Settlement,” or “Settlement Agreement” means this Settlement Agreement.
- C. “Court” means the Superior Court for the State of California, County of Los Angeles.
- D. “Covered Period” means the period of time from April 6, 2020 to the date the Court enters an order granting preliminary approval or August 15, 2022, whichever occurs sooner.
- E. “Defendants” means D. Longo, LLC and Penske Motor Group, LLC.
- F. “Defendants’ Counsel” means Alexander M. Chemers and Omar M. Aniff of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
- G. “Effective Date” means two court days after: (a) the Parties are notified of entry of the Court’s Order granting approval of the Settlement, if no timely motions for reconsideration and no appeals or other efforts to obtain review have been filed; or (b) in the event that an appeal or other effort to obtain reconsideration or review has been initiated, the date sixty-one (61) calendar days after such appeal or other reconsideration or review has been finally concluded in favor of the order granting approval of the Settlement and the order granting approval of the Settlement is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing en banc, petitions for certiorari, or otherwise and funding of the Settlement Payments.
- H. “Longo Toyota” means defendant D. Longo, LLC.
- I. “LWDA” means the California Labor & Workforce Development Agency.

- J. "LWDA Payment" means the portion of the payment from the Net Settlement Amount to be paid to the LWDA under the Settlement Agreement.
- K. "Net Settlement Amount" means the amount from the Total Settlement Amount that is available for distribution as the LWDA Payment and Settlement Shares to the PAGA Settlement Group Members after deductions for the LWDA Payment, the Settlement Administrator's fees and expenses, the incentive payment to Plaintiff, and Plaintiff's Counsel's attorneys' fees and costs award. The entire Net Settlement Amount will be distributed to the LWDA and PAGA Settlement Group Members for settlement of PAGA penalties.
- L. "Order" means the Order granting approval of the Settlement. The Parties will submit a proposed Order Approving Settlement Agreement for consideration by the Court.
- M. "PAGA" means the Labor Code Private Attorneys General Act of 2004, California Labor Code Section 2698 et seq.
- N. "PAGA Settlement Group Members" means: All current and former non-exempt employees of Longo Toyota who worked in the State of California from April 6, 2020 through the date that the Court enters the order granting approval of the settlement or August 15, 2022, whichever occurs sooner.
- O. "Plaintiff" means plaintiff Labri J. Melzer.
- P. "Plaintiff's Counsel" means Justin F. Marquez, Benjamin Haber, and Daniel Kramer of the Wilshire Law Firm.
- Q. "Parties" means Plaintiff and Defendants.
- R. "Released PAGA Claims" means that this settlement forever bars Releasing Parties from pursuing any legal claims and factual or legal theories/allegations that were pursued in the operative complaint in the Action, including but not limited to all of the following claims for civil penalties under PAGA for: (a) failure to pay all wages owed; (b) failure to authorize and permit meal periods; (c) failure to authorize and permit rest periods; (d) failure to pay wages timely during employment; (e) failure to maintain accurate, itemized payroll records; (f) failure to pay all wages earned and unpaid at separation; and (g) failure to pay wages timely during employment; (h) failure to pay all wages earned and unpaid at separation; (i) failure to furnish accurate itemized wage statements; and (j) any other claims or penalties under the wage and hour laws pleaded in the Action or primary rights pursued in the Action. The period of the Release shall extend to the date that the Court enters the order granting approval of the settlement or August 15, 2022, whichever occurs sooner. The res judicata effect of the Judgment will be the same as that of the Release.
- S. "Released Parties" means Defendants and all of their past, present and future, direct and/or indirect, parent companies, subsidiaries, divisions, partnerships, and affiliates, and each of their respective present and former employees, officers,

directors, partners, members, agents, attorneys, insurers, administrators, representatives, shareholders, predecessors, successors, assigns, and joint venturers.

- T. "Releasing Parties" means Plaintiff, the LWDA, and all PAGA Settlement Group Members, and each of their predecessors, successors, and assigns.
- U. "Settlement Administrator" means a third-party administrator selected by the Parties and approved by the Court. The Settlement Administrator will engage in best efforts to trace PAGA Settlement Group Members so that they can receive their Settlement Share, including last known telephone number and/or personal email address (if known by Defendants).
- V. "Settlement Share" means the portion of the Net Settlement Amount allocable to each PAGA Settlement Group Member as consideration for the settlement and release of claims for penalties under PAGA as provided by this Agreement.
- W. "Total Settlement Amount" means the total amount to be paid by Defendants as provided by this Agreement.

II. NO ADMISSION OF LIABILITY.

- A. Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, or have any liability to anyone under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendants. This Settlement and the fact that Plaintiff and Defendants were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).
- B. Whether or not the Order becomes final and the Effective Date occurs, nothing in this Agreement, any document, statement, proceeding or conduct related to the Settlement, or any reports or accounting of those matters, will be construed as, offered or admitted in evidence as, received as, or deemed to be evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage. If the Court does not approve the Settlement or enter the Order approving it for any reason, or if the Effective Date does not occur for any reason, Defendants shall retain all of their rights and defenses, including, without limitation, to object to the maintenance of the Action as a representative action, and nothing in this Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any party concerning whether the Action may properly be maintained as a representative action under PAGA.
- C. This Section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used

in any and all proceedings to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.

III. SETTLEMENT TERMS AND CONDITIONS.

- A. Total Settlement Amount.** Subject to the terms and conditions of this Agreement, the Total Settlement Amount is \$440,000.00. The Total Settlement Amount will cover: (a) the LWDA Payment; (b) all Settlement Shares to PAGA Settlement Group Members; (c) Plaintiff's attorneys' fees, costs, and expenses related to the claims encompassed by this Agreement (which includes, but is not limited to, all such fees and costs incurred to date, as well as all such fees and costs incurred in documenting the settlement, securing court approval of the settlement including any and all submissions related thereto, providing notice to the LWDA, administration associated with the Settlement, and obtaining a dismissal of the Action with prejudice); (d) the incentive payment to Plaintiff; and (e) the Settlement Administrator's fees and expenses. In no event shall Defendants be required to pay any amount more than the Total Settlement Amount.
- B. Attorneys' Fees and Costs.** Defendants will not oppose an application for attorneys' fees in an amount that does not exceed 33 1/3% of the Total Settlement Amount (*i.e.*, \$146,666.67). Defendants will not oppose an application for up to \$20,000.00 in litigation costs. Plaintiff's Counsel will not seek, or be entitled to any attorneys' fees and/or costs related to the claims encompassed by this Agreement, other than those specified in this Agreement. Plaintiff's Counsel shall be solely and legally responsible to pay all applicable taxes on any payments made pursuant to this Section. The appropriate 1099 tax forms shall be provided by the Settlement Administrator to Plaintiff's Counsel for any payments made pursuant to this Section.
- C. Incentive Payments.** Plaintiff's Counsel will request, and Defendants will not oppose, a representative incentive payment to Plaintiff from the Total Settlement Amount in an amount not to exceed \$10,000.00. This incentive payment shall be in addition to whatever payment Plaintiff is otherwise entitled to as a PAGA Settlement Group Member. The appropriate 1099 tax forms shall be provided by the Settlement Administrator to Plaintiff for any payment made pursuant to this Section.
- D. Settlement Shares.** Subject to the terms and conditions of this Agreement, each PAGA Settlement Group Member will be allocated a Settlement Share from 25% of the Net Settlement Amount; the remainder of the Net Settlement Amount shall be paid to the LWDA.
- E. Distribution of Settlement Shares to PAGA Settlement Group Members.** After deducting for the amounts for the LWDA Payment, the Settlement Administrator's fees and expenses, the incentive payment to Plaintiff, and attorneys' fees, costs, and expenses, the Net Settlement Amount will be paid as Settlement Shares to each PAGA Settlement Group Member. The portion of the Net Settlement Amount

available for distribution to PAGA Settlement Group Members (25% of the Net Settlement Amount) will be divided equally among all PAGA Settlement Group Members. Because these payments are for civil penalties, they will be made without withholdings and with the Settlement Administrator issuing IRS Form 1099s to the PAGA Settlement Group Members for each Settlement Share. PAGA Settlement Group Members will be responsible for any and all taxes due because of their Settlement Shares.

- F. **Payment to LWDA.** The Settlement Administrator will pay 75% of the Net Settlement Amount to the LWDA as its share of the Settlement attributable to civil penalties under Labor Code Section 2699(i) (the “LWDA Payment”).
- G. **Appointment of Settlement Administrator.** In connection with a joint submission to the Court for an order approving this Agreement, the Parties will propose a Settlement Administrator to distribute the Settlement Shares and other payments due under the Settlement, and otherwise administer the Settlement.
- H. **Payment to Settlement Administrator.** The Settlement Administrator will pay to itself out of the Total Settlement Amount its reasonable fees and expenses as approved by the Court.
- I. **Good Faith Efforts.** The Parties agree to make good faith efforts to work together to obtain current mailing addresses for PAGA Settlement Group Members for whom the Settlement Administrator receives their settlement checks returned as undeliverable, or who have not cashed their settlement checks ninety (90) days after the Settlement Administrator mails their settlement checks. Good faith efforts include but are not limited to Defendants providing the Settlement Administrator with cellphone numbers and/or personal email addresses that it has in its records.
- J. **Procedure for Seeking Approval of Settlement.**
 - 1. Plaintiff shall submit a copy of the Settlement to the LWDA at the same time that the Settlement is submitted to the Court for approval pursuant to California Labor Code Section 2699(l)(2). If Plaintiff fails to satisfy this condition in compliance with California Labor Code Section 2699(l)(2), the Settlement shall be voidable at Defendants’ option.
 - 2. Within 10 calendar days after entry of the Order approving the Settlement, Plaintiff shall submit a copy of the Order in compliance with California Labor Code Section 2699(l)(3). If Plaintiff fails to satisfy this condition in compliance with California Labor Code Section 2699(l)(3), the Settlement shall be voidable at Defendants’ option.
 - 3. If the Court does not grant approval of the Settlement or will only grant approval of the Settlement by requiring the Parties to make material modifications, or if the Court’s approval of the Settlement is reversed or materially modified on appellate review, then the Settlement will become null and void unless the Parties mutually agree to renegotiate the Settlement.

A modification of amounts payable in attorneys' fees or expenses, or the amount of the requested incentive payment, shall not be deemed a material modification of the Settlement.

K. Compliance with All Required Notice. Plaintiff's compliance with the notice procedures described in Paragraphs III(J)(1) and III(J)(2) shall constitute due and sufficient notice to the LWDA, and shall be deemed by the Parties to satisfy any requirement of due process. Nothing else shall be required of, or done by, the Parties, Plaintiff's Counsel, or Defendants' Counsel to provide notice of the Settlement.

L. No Right to Opt Out. The Parties agree there is no statutory right for any PAGA Settlement Group Member to opt out or otherwise exclude themselves from the Settlement.

M. Payment of Settlement Shares to PAGA Settlement Group Members.

1. No later than ten (10) business days after the Effective Date, Defendants shall provide the Settlement Administrator with a list of the PAGA Settlement Group Members (the "Aggrieved Employees List"). The Aggrieved Employees List shall state each PAGA Settlement Group Member's (1) full name, (2) last known address, (3) last known phone number, (4) social security number, and (5) pay periods during the Covered Period (or information from which the pay periods can be determined). This information shall be treated as and remain confidential and shall be used solely to manage the notice and settlement administration process described herein, shall not be disclosed to anyone other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to the express written authorization of Defendants, the individual in question, or by order of the Court.
2. Defendants represented that there were approximately 39,057 pay periods worked by the PAGA Settlement Group Members during the period from April 6, 2020 through March 31, 2022. In the event the number of pay periods worked by the PAGA Settlement Group Members increases by more than 10%, or 3,906, for the period from April 6, 2020 through March 31, 2022, then the Total Settlement Amount shall be increased proportionally by the pay periods worked in excess of 42,963 multiplied by the pay period value. The pay period value shall be calculated by dividing the Total Settlement Amount by 39,057 pay periods. The Parties agree that the pay period value is \$11.26 (\$440,000/39,057 pay periods). Thus, for example, should there be 45,000 pay periods in the period from April 6, 2020 through March 31, 2022, then the Total Settlement Amount shall be increased by \$22,936 ((45,000 pay periods – 42,963 pay periods) x (\$11.26/ pay period). As used here, "pay periods" refers to pay periods during which a PAGA Settlement Group Member recorded at least one hour of work, unless determining that is not possible and in which case

dates of employment can be used instead.

3. Prior to mailing the Settlement Shares with the PAGA Settlement Group Member Cover Letter (the "Cover Letter," attached hereto as "EXHIBIT A"), the Settlement Administrator shall check the addresses provided using the National Change of Address database. If any Settlement Shares are returned as undeliverable, but with a forwarding address the Settlement Administrator shall within five (5) calendar days re-mail the Settlement Shares with the Cover Letter to the forwarding address. If any Settlement Shares are returned as undeliverable without a forwarding address, the Settlement Administrator shall within five (5) calendar days conduct a skip trace search for a more current address of the PAGA Settlement Group Member and re-mail the Settlement Shares with the Cover Letter to any alternative or updated address obtained by the Settlement Administrator.
 4. The 25% of the Net Settlement Amount shall be distributed to PAGA Settlement Group Members on a pro rata basis. Specifically, the 25% of the Net Settlement Amount shall be divided by the total number of pay periods worked by PAGA Settlement Group Members during the Covered Period to determine a "per pay period value." For each of the PAGA Settlement Group Members, the per pay period value will then be multiplied by the applicable pay period for each person to determine the individual Settlement Share.
 5. Settlement checks to PAGA Settlement Group Members shall be negotiable for one hundred eighty (180) days from the initial mailing date. If a PAGA Settlement Group Member fails to cash the check or deposit the check within one hundred eighty (180) days of the initial mailing date, the Settlement Administrator will distribute the funds represented by the uncashed check(s) to the California State Controller's Office Unclaimed Property Fund.
 6. The entirety of the settlement checks to PAGA Settlement Group Members shall be treated as penalties from which no withholdings will be taken and for which the Settlement Administrator shall issue the appropriate 1099 forms.
- N. **Timing of Settlement Payments.** Within 5 business days after the Effective Date, the Settlement Administrator will provide Defendants with wire transfer information. Within 15 business days after the Effective Date, Defendants will transfer the Total Settlement Amount to the Settlement Administrator via wire transfer. The Settlement Administrator will then distribute the payments required under this Agreement within 10 business days of receipt of the Total Settlement Amount. No person or entity shall have any claim against Defendants, Defendants' Counsel, Plaintiff, Plaintiff's Counsel or any Settlement Administrator based on distributions and payments made in accordance with this Agreement. Defendants shall have no responsibility to distribute any payment of attorneys' fees or costs to

any attorney or law firm that may claim entitlement to fees and costs under this Settlement Agreement or as a result of the Action.

- O. **Waiver of Right to Appeal.** Provided that the Court's approval of this Settlement is consistent with the material terms of this Agreement, Plaintiff, Defendants, and their respective counsel hereby waive any and all rights to appeal the approval of the Settlement, and the Order therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If any appeal is taken, the time for consummating the Settlement (including making payments under the Settlement) will be suspended until after the Effective Date.
- P. **Representative Group Release.** Upon the Effective Date, this settlement forever bars Releasing Parties, for the period spanning April 6, 2020 through the date that the Court enters the order granting approval of the settlement or August 15, 2022, whichever occurs sooner, from pursuing the Released PAGA Claims. This release applies whether or not a given PAGA Settlement Group Member receives or cashes his or her individual Settlement Share.

Releasing Parties agree that this waiver is an essential and material term of this release and the Settlement that underlies it, and that without such waiver, the Settlement would not have been accepted.

- Q. **General Release By Plaintiff.** Plaintiff individually agrees to a complete release of claims against the Released Parties, of any nature whatsoever, whether known or unknown, arising out of her employment with Defendants, to the fullest extent permitted by law. This includes, but is not limited to, claims involving breach of contract, tort, discrimination, harassment, wage-and-hour violations, and any other federal, state or other government statute or regulation.

Plaintiff shall also be deemed to have expressly waived and relinquished to the fullest extent permitted by law the provisions, rights, and benefits of Civil Code § 1542, or any other similar provision under federal or state law that purports to limit the scope of a general release. Plaintiff has read Civil Code § 1542, which provides:

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.

- R. **No Injunctive Relief.** As part of this Settlement, Defendants shall not be required to enter any consent decree, nor shall Defendants be required to agree to any provision of injunctive relief.

- S. **Interim Stay of Proceedings.** The Parties agree to refrain from further litigation of this matter, except such proceedings necessary to implement and obtain entry of the Order granting approval of the Settlement. The Parties further agree that the mutual, voluntary cessation of litigation shall terminate if the Settlement is not approved by the Court.
- T. **Continued Jurisdiction.** After entry of the request for dismissal of the Action, with prejudice, the Court shall have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Agreement, (ii) Agreement administration matters, and (iii) such matters as may be appropriate under court rules or applicable law, or as set forth in this Agreement.
- U. **Confidentiality, No Pending Claims or Solicitation.** Neither Plaintiff nor their counsel shall engage in the release of any public statements, press releases, or advertising relating to this Settlement or to Defendants, nor shall they make any public comments or initiate any publicity of any kind related to this Settlement or Defendants. If, before the filing of the submission to the Court seeking approval of the Settlement, Plaintiff and their counsel discloses to anyone other than Plaintiff's financial advisors (a) that a settlement has been reached or (b) any of the terms of the Settlement except as required by law or to effect the Settlement, Defendants may rescind the Settlement, rendering it null and void. Any communication about the Settlement and this Agreement to PAGA Settlement Group Members prior to Court approval of the notice process, will be directed to the Settlement Administrator and will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming notice. With the exception of claims asserted by the Plaintiff in this Action, including Released PAGA Claims, and the pending unemployment claim filed by Plaintiff, Plaintiff agrees not to participate in, encourage, assist or facilitate, and Plaintiff represent that she has not participated in, encouraged, assisted or facilitated, the bringing or maintenance of any kind of cause of action, claim, report, or any administrative complaint on the federal, state, or local level by any of the Released Parties' former or present employees against any of the Released Parties based on any matter arising or accruing prior to the execution of the Agreement, except for any activities that cannot be precluded under applicable law. The Parties agree that the information to be provided to the Settlement Administrator will not be used to solicit PAGA Settlement Group Members to file any claim, arbitration, charge or complaint of any kind whatsoever against Released Parties, or for any other purpose other than to administer the settlement as provided herein. Plaintiff and her counsel represent that they are unaware of any other employees of the Released Parties who have taken any affirmative steps toward the filing of any claims against the Released Parties. Plaintiff agrees to not knowingly use information obtained via the Action or settlement to solicit, encourage, or assist anyone else to initiate a claim against the Released Parties.
- V. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action

reached through arms-length negotiations, through the assistance of a neutral mediator, taking into account all relevant factors, current and potential.

W. Agreement Constitutes a Complete Defense. To the extent permitted by law, this Settlement Agreement may be pled as a full and complete defense to any action, suit, or other proceedings that may be ongoing, instituted, prosecuted, or attempted, with respect to the Released PAGA Claims, against the Released Parties.

X. Tax Liability. Other than the reporting requirements set forth in Paragraph III(E), the PAGA Settlement Group Members, including Plaintiff, shall be responsible for the reporting and payment of any federal, state, and/or local income or other tax or any other withholdings, if any, on any of the payments made pursuant to this Settlement Agreement. Defendants make no representations, and it is understood and agreed that Defendants have made no representations, as to the taxability of any portions of the Individual Settlement Shares to any PAGA Settlement Group Members, the payment of any costs or an award of attorney fees, or any payments to Plaintiff.

Y. Miscellaneous Terms.

1. **Entire Agreement.** This Agreement contains the entire agreement between the Parties regarding this Settlement and the Released PAGA Claims and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the subject matter hereof, and all prior or contemporaneous understandings, representations, and statements, oral or written, are merged into and superseded by this Agreement. No other promises or agreements, either expressed or implied, shall be binding unless signed in writing by Plaintiff and Defendants.
2. **Attorney Authorization.** Plaintiff's Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.
3. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.

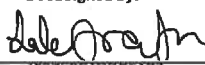
4. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of the Parties.
5. **Applicable Law.** All terms and conditions of this Agreement will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
6. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
7. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
8. **Execution in Counterparts.** This Agreement may be executed in counterparts which shall be deemed to be part of one original, and facsimile signatures and signatures transmitted by PDF shall be equivalent to original signatures.
9. **Severability.** If any term or provision of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

IV. EXECUTION

The Parties have duly authorized and caused this Agreement to be executed on the date(s) set forth below.

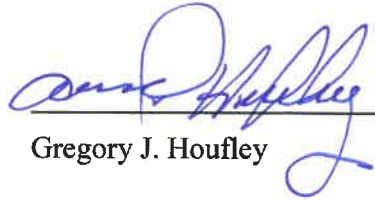
Dated: October ⁴, 2022

Labri J. Melzer

DocuSigned by:

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Dated: October 18, 2022

PENSKE MOTOR GROUP, LLC AND
D. LONGO, LLC
EVP & CFO



Gregory J. Houfley

Dated: October 18, 2022

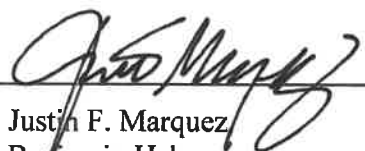
OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
Alexander M. Chemers

By: 

Alexander M. Chemers
Omar M. Aniff
Attorneys for Defendants

Dated: October 5, 2022

WILSHIRE LAW FIRM, PLC

By: 

Justin F. Marquez
Benjamin Haber
Daniel Kramer
Attorneys for Plaintiff Labri J.
Melzer

EXHIBIT A

[Administrator's Letterhead]

To: «FirstName» «LastName»
«Address1» «Address2»
«City» «State» «Zip»

Enclosed please find a check in the amount of [INDIVIDUAL SETTLEMENT SHARE].

You are receiving this check in connection with a claim brought by a former employee ("Plaintiff") of D. Longo, LLC ("Longo Toyota") against Longo Toyota and Penske Motor Group, LLC (together "Defendants"). The claim was filed in Los Angeles Superior Court under Case No. 21PSCV01025 (the "Action").

Plaintiff's claim against Defendants is for civil penalties pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), a law that allows Plaintiff to attempt to stand in the shoes of the government and to seek penalties on the government's behalf and on behalf of those employees who Plaintiff claims were "aggrieved" by Defendants' alleged unlawful conduct. Specifically, Plaintiff alleges that Defendants failed to comply with wage-and-hour laws as to non-exempt employees who worked for Longo Toyota.

Defendants deny these claims and maintain that they fully complied with all applicable wage-and-hour laws. Nevertheless, to avoid further costs and uncertainty from further litigation, Defendants agreed to settle the matter. The settlement covers Defendants and their parent companies, subsidiaries, divisions, partnerships, or affiliates, and each of their respective present and former employees, officers, directors, partners, members, agents, attorneys, insurers, administrators, representatives, shareholders, predecessors, successors, and assigns (all of whom are referred to here as the "Released Parties"). The Court has approved the settlement and release of claims described below. By settling this claim, Defendants and the Released Parties are not admitting they have done anything wrong, and they deny that they owe any penalties to the government or to you.

On [insert date] 2022, the settlement was approved by the Court. A portion of the settlement is being paid to the government and a portion is being paid to each non-exempt employee who worked for Longo Toyota in California from April 6, 2020 to the date the Court enters an order granting preliminary approval or August 15, 2022, whichever occurs sooner (the "Aggrieved Employees"). You are receiving a portion of the settlement because Defendants' records indicate that you worked for Defendants from April 6, 2020 to [insert date] (the "Release Period") in one of those roles.

You will not be retaliated against for cashing the check. It is entirely up to you if you cash your check or not. Checks that are not cashed within 180 days of issuance shall be sent to the California State Controller's Office. Regardless of what you do with the check issued to you, by law and Court order, you have released the Released Parties from the released claims described below.

One hundred percent (100%) of your payment under this settlement will be considered penalties and will be reported to the IRS and state tax authorities.

This settlement forever bars you and other Aggrieved Employees, for the period spanning April 6, 2020 through [insert date] from pursuing any legal claims and factual or legal theories/allegations that were pursued in the operative complaint in the Action, including but not limited to all of the following claims for civil penalties under PAGA for: (a) failure to pay all wages owed; (b) failure to authorize and permit meal periods; (c) failure to authorize and permit rest periods; (d) failure to pay wages timely during employment; (e) failure to maintain accurate, itemized payroll records; (f) failure to pay all wages earned and unpaid at separation; (g) failure to furnish accurate itemized wage statements; and (j) any other claims or penalties under the wage and hour laws pleaded in the Action or primary rights pursued in the Action.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement.

If you have any questions, you may call or write [insert], at the following phone number or address: [insert address and telephone number for Administrator's contact person]

Exhibit B

Wilshire Law Firm, PLC
Transaction Detail by Account
All Transactions

11/1/2022
Accrual Basis

<u>Type</u>	<u>Date</u>	<u>Num</u>	<u>Memo</u>	<u>Amount</u>	<u>Balance</u>
COS					
Expert Fees					
	4/27/2022	061522P	Mediation Fee	8,000.00	8,000.00
	6/23/2022	6283	Expert Fees	2,562.50	2,562.50
	6/29/2022	12232563	Expert Fees	69.34	69.34
Total Expert Fees				10,631.84	10,631.84
Legal Expenses					
	10/2/2021		PAGA Fee	75.00	75.00
	12/9/2021		LASC Doc Retrieval	3.00	3.00
	4/15/2022		LASC Doc Retrieval	5.00	5.00
	6/24/2022	7072D9F3-0004	Legal Research	123.57	123.57
	7/6/2022	846630730	Legal Research	316.38	316.38
Total Legal Expenses				522.95	522.95
Process Service Fees					
	12/8/2021	42747	Attorney Services	563.50	563.50
	12/10/2021	42869	Attorney Services	133.00	133.00
	12/10/2021	42870	Attorney Services	144.00	144.00
	12/10/2021	42895	Attorney Services	45.00	45.00
	12/13/2021	42940	Attorney Services	45.00	45.00
	4/5/2022		Attorney Services	18.22	18.22
	4/11/2022		Attorney Services	38.81	38.81
	4/19/2022	46856	Attorney Services	85.00	85.00
	6/28/2022		Attorney Services	61.65	61.65
	7/5/2022		Attorney Services	18.22	18.22
	10/7/2022		Attorney Services	18.22	18.22
Total Process Service Fees				1,170.62	1,170.62
Other Costs					
	7/21/2021	E-526085	Printing Cost	5.86	5.86
	7/21/2021	E-526086	Printing Cost	5.86	5.86
	7/21/2021	E-526084	Printing Cost	5.86	5.86
	7/21/2021	E-526083	Printing Cost	5.86	5.86
	9/24/2021	E-596782	Printing Cost	20.00	20.00
	10/1/2021	E-600275	Printing Cost	6.33	6.33
	10/1/2021	E-600276	Printing Cost	6.33	6.33
	10/1/2021	E-600277	Printing Cost	6.33	6.33
	10/1/2021	E-611429	Printing Cost	5.75	5.75
	4/5/2022	E-1473372	Printing Cost	2.00	2.00
	4/18/2022	E-954973	Printing Cost	3.00	3.00
	7/15/2022	E-1469060	Printing Cost	0.25	0.25
	6/15/2022		Meal during mediation	414.78	414.78
	6/15/2022		Meal during mediation	106.00	106.00
Total Other Costs				594.21	594.21
TOTAL				12,919.62	12,919.62

Exhibit C

Case Name: Melzer v D. Longo, LLC

Date: **June 17, 2022**

PAGA Disbursement Only

Requesting Attorney: **Justin F. Marquez**

* Aggrieved Employees: **800**

Plaintiff or Defense: **Plaintiff**

Postage Total: **\$505.76**

Firm Name: **Wilshire Law Firm, PLC**

Grand Total: **\$11,842.76**

Telephone: **(213) 381-9988, Ext. 345**

***** DISCOUNTED FLAT FEE: \$8,000.00**

Email: justin@wilshirelawfirm.com

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / NCOA / TFN Establish, Setup & Support / Static Website / Spanish Translation

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	7	\$665.00
System Programming/Data Base Setup	\$150.00	7	\$1,050.00
Project Manager-Notice Format	\$95.00	1	\$95.00
NCOA	\$150.00	1	\$150.00
Call Center Support	\$3.00	160	\$480.00
Static Website	\$500.00	1	\$500.00
Spanish Translation	\$250.00	1	\$250.00
Total			\$3,190.00

* Up to 120 days after disbursement

SSN Verification

Verify SSN for Validity with IRS / IRS Backup Withholdings

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$95.00	3	\$285.00
SSN Verification	\$0.20	800	\$160.00
Total			\$595.00

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Notice, Checks/1099's

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	2	\$300.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/ Attorney	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Notice, Checks & 1099	\$3.00	800	\$2,400.00
Estimated Postage (up to 1 oz.)	\$0.58	800	\$464.00
Total			\$4,704.00

Post-Disbursement & Tax Reporting

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	8	\$40.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.25	64	\$80.00
Remail Undeliverable Checks	\$3.00	64	\$192.00
Estimated Postage (up to 1 oz.)	\$0.58	72	\$41.76
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	1	\$150.00
Project Manager - Acnt Files Sent to Atty	\$150.00	1	\$150.00
Project Supervisor - Final Declaration	\$150.00	1	\$150.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$3,353.76

**CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.*

Grand Total: **\$11,842.76**

TERMS AND CONDITIONS

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 ("CPT").

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
- b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
- c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
- d) **"Claims Administrator"** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
- f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like which contain Client Data.
- g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
- h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
- i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
- k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
- l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
- m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
- o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
- p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
- q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
- r) **"Products"** means any and all CPT Services, and work product resulting from Services.
- s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds

are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.

- t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement, and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement, and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. Mutual Obligations.
- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service. If there

is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) Incident Notification. Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. Qualified Settlement Fund Account. At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. Fees and Payment. Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only, and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. Term and Termination.
 - a) Term. The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
 - b) Termination for Cause. Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
 - c) Bankruptcy Events. A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
 - d) Effect of Termination. Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
 - e) Final Payment. If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination", Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a. Compelled Disclosure. If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the

other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

- b. Remedies. If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. Intellectual Property. As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. Indemnification. Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. Warranties. Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. Liability.
 - a. Liability Cap. EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
 - b. Exclusion of Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. Communications. CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.
15. Miscellaneous Provisions.
 - a. Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and

the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

- b. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c. Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d. Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e. Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f. Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g. No Third Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.
- h. Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT

from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i. Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j. Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k. Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l. Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m. Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n. Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.
- o. Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.
- p. Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.



Journal Technologies Court Portal

Court Reservation Receipt

Reservation

Reservation ID: 816505986527	Status: RESERVED
Reservation Type: Motion re: (Motion for Preliminary Approval of Settlement)	Number of Motions: 1
Case Number: 21PSCV01025	Case Title: LABRI J. MELZER vs D. LONGO, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, et al.
Filing Party: Labri J. Melzer (Plaintiff)	Location: Pomona Courthouse South - Department O
Date/Time: October 31st 2022, 9:30AM	Confirmation Code: CR-EL82JSLP6PDPHFFEF

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount: \$61.65	Type: MasterCard
Account Number: XXXX1231	Authorization: 48202Z

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