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individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF SAN JOAQUIN**

SAM KEOPHIMANE and LUIS MEDINA,  
individually and on behalf of all other  
similarly situated employees,

Plaintiffs,

vs.

TRACY AUTO L.P. (DBA TRACY  
TOYOTA), a California Limited Partnership;  
LOTT AUTOMOTIVE, INC., a California  
Corporation; RONALD M. LOTT, an  
individual; and DOES 1 to 100, inclusive,

Defendants.

**Case No. STK-CV-UOE-2022-0001117**

*Assigned for All Purposes to Hon. Robert T.  
Waters, Department 11B*

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION TO APPROVE  
PRIVATE ATTORNEYS GENERAL ACT  
SETTLEMENT**

Date:  
Time: 9:00 a.m.  
Dept.: 11B  
Judge: Hon. Robert T. Waters

Filed: February 14, 2022  
Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion to Approve Private Attorneys General Act Settlement (“Motion”) in the above  
3 referenced case came before this Court, on \_\_\_\_\_ at 9:00 a.m., in Department 11B before the  
4 Honorable Robert T. Waters, presiding. Plaintiffs Sam Keophimane and Luis Medina (“Plaintiffs”) filed  
5 this Private Attorneys General Act (“PAGA”) action on February 14, 2022. The operative Complaint  
6 consists of a single cause of action under the PAGA alleging that Tracy Auto L.P., (DBA Tracy Toyota),  
7 Lott Automotive, Inc., and Ronald M. Lott (“Defendants”) violated California law by failing to pay  
8 overtime wages, failing to pay minimum wages, failing to provide meal periods or pay premiums in lieu  
9 thereof, failing to provide rest periods or pay premium in lieu thereof, failing to provide accurate wage  
10 statements, failing to pay final wages, failing to pay reimbursement for expenses, failing to pay contract  
11 wages and unlawful deductions, failing to maintain accurate records, failing to provide paid sick leave,  
12 and untimely payment of wages. The Complaint further alleges individual liability for several of these  
13 alleged Labor Code violations under Labor Code sections 558, 558.1. Defendants have denied all of  
14 Plaintiffs’ allegations. Plaintiffs sought attorneys’ fees and costs as part of this Action.

15 The parties have agreed to a settlement of the PAGA claims. Defendants will provide monetary  
16 consideration in exchange for a release of claims and dismissal consistent with the terms of the PAGA  
17 Settlement (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning  
18 as set forth in the Agreement. The Court, having received and considered Plaintiffs’ Motion, the  
19 declarations in support, the Agreement, the Notice of Settlement, and other evidence, HEREBY  
20 ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

21 **I. SCOPE OF INDIVIDUALS WITHIN THE PAGA SETTLEMENT – AGGRIEVED**  
22 **EMPLOYEES**

23 The Court finds that Plaintiffs have exhausted all administrative remedies required to bring the  
24 PAGA claims asserted in this litigation. Plaintiffs are authorized to act on behalf of the Labor and  
25 Workforce Development Agency (“LWDA”) with respect to the PAGA claims being released under the  
26 Agreement. The Court finds the scope of individuals subject to the terms and conditions of the  
27 Agreement, its releases, and all rights and obligations thereunder include the following:  
28

1 All of Defendants' nonexempt, employees who have or continue to work  
2 for Defendants from November 23, 2020, up to either (1) the Final  
Approval Date, or (2) sixty (60) days after the Agreement is fully  
executed, whichever is earlier.

3 The Court recognizes that the foregoing definition is for Aggrieved Employee identification  
4 purposes only and is not intended to capture the claims at issue or limit or alter the released claims under  
5 the Agreement.

## 6 **II. APPROVING THE AGREEMENT**

7 The Court has reviewed the Agreement, which was submitted with Plaintiffs' Motion as Exhibit  
8 A. The Court finds that the Agreement is fair, reasonable, and adequate, and, therefore, is approved as  
9 required under California Labor Code sections 2698 *et seq.* Based on the potential amount of penalties  
10 at issue, the risk of loss on the merits, the risk of being able to prove violations in each pay period as to  
11 each individual as required by statute for damages purposes, and the Court's statutorily authorized  
12 discretion to reduce penalties, the Agreement represents a substantial recovery for Aggrieved Employees  
13 and the LWDA to further the LWDA's purpose in enforcing the California Labor Code. The Court also  
14 finds that the Agreement provides a recovery that creates an effective, substantial deterrent to any  
15 potential future non-compliance, furthering the purpose of the California Labor Code and LWDA.

16 The Court approves of the PAGA penalty allocations set forth in the Agreement wherein 75% of  
17 the Net Settlement Amount will be paid to the LWDA and 25% of the Net Settlement Amount will be  
18 paid to Aggrieved Employees as civil penalties pursuant to California Labor Code section 2699(i).

19 Additionally, because the Court finds the Parties' settlement to have been agreed upon only after  
20 extensive and costly investigation, arms-length negotiations, and in an attempt to avoid further delays  
21 and costs, the Court approves the Agreement and terms stated therein, which is incorporated by  
22 reference in its entirety, as if stated here in full, including the \$222,000 Gross Settlement Amount.

23 The Court finds that an award of fees under the common fund doctrine is appropriate in this case  
24 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Aggrieved employees and the  
25 LWDA), the benefits can be accurately traced as set forth in the Agreement, Plaintiffs and Plaintiffs'  
26 Counsel were able to negotiate on behalf of Aggrieved employees and the LWDA, and the fee can be  
27 shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the  
28 Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir.

1 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th  
2 480, 506 (2016). The Court finds the attorneys' fees request of Thirty Five Percent (35%) of the Gross  
3 Settlement Amount, *i.e.* \$77,700, to be appropriate compensation for Plaintiffs' Counsel. The attorneys'  
4 fees request is within the range of percentages that have been approved by other Courts in similar cases  
5 and is reasonable in light of the circumstances of this case, the substantial and beneficial results obtained  
6 on behalf of Aggrieved Employees and the LWDA, and the contingent nature of the recovery over the  
7 course of this case, which included potential loss at summary judgment and/or trial proceedings.  
8 Furthermore, the Court has performed a lodestar cross check, which supports the percentage requested  
9 as a reasonable one. Additionally, the Court orders that \$13,128.85 of the Gross Settlement Amount  
10 will be paid to Plaintiffs' Counsel for reasonable costs incurred in this case.

11 The Court orders and approves ILYM Group, Inc. to act as the Settlement Administrator in this  
12 case. The Settlement Administrator will take its fees out of the Gross Settlement Amount, which are not  
13 to exceed \$3,050. Any difference between the actual Settlement Administrator Costs and the approved  
14 amount will be added to the Net Settlement Amount for distribution between the LWDA and Aggrieved  
15 Employees consistent with the allocations and formulas set forth in the Agreement.

16 The Court orders that Plaintiffs will receive an Enhancement Payment of \$10,000 each from the  
17 Gross Settlement Amount for their work on behalf of the Aggrieved Employees and the LWDA and in  
18 exchange for their general release of all their individual claims in addition to any amount Plaintiffs may  
19 be entitled to under the Agreement's pro rata distribution formula.

20 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to  
21 Aggrieved Employees that are not cashed by the deadline to do so shall be donated Childrens Advocacy  
22 Center of California (CACC). No portion of the Gross Settlement Amount will revert to Defendants for  
23 any reason.

24 The releases and waivers for Aggrieved Employees and Plaintiffs are also approved by the Court  
25 as set forth in the Agreement.

### 26 **III. APPROVAL OF THE NOTICE OF SETTLEMENT**

27 The Court finds that the Notice of Settlement, which was submitted with Plaintiffs' Motion as  
28 Exhibit E, fairly and adequately advised Aggrieved Employees about the Agreement and its effect. The

1 Court further finds that the Notice of Settlement and distribution of such notice by first class mail to  
2 each identified Aggrieved Employees at his or her most recent address based on a National Change of  
3 Address database search from the Aggrieved Employees' last known address and a skip trace on any  
4 Aggrieved Employees who have their notice returned as "undeliverable" or "not at this address"  
5 comported with all constitutional requirements, including those of due process.

6 The Court also finds that because there is a strong interest in providing Aggrieved Employees the  
7 opportunity to recover under the Agreement, along with the parties' efforts to minimize any intrusion to  
8 privacy rights, the sharing of employment information, including social security numbers, is not a  
9 serious intrusion on their privacy rights. Hence, the Court orders Defendants to provide first and last  
10 name, last known mailing address, social security number, and hire and termination dates for pay period  
11 calculations to the Settlement Administrator only, and not to Plaintiffs or Plaintiffs' Counsel, in order to  
12 process this settlement as contemplated within the Agreement and approved by this Order. The  
13 Settlement Administrator shall only use this information for settlement purposes identified herein, and  
14 this information shall be kept confidential, not be shared with any third-party, and used only to  
15 administer the settlement.

#### 16 **IV. IMPLEMENTATION SCHEDULE**

17 Accordingly, with good cause shown, the Court hereby approves and orders that the following  
18 implementation schedule be adhered to:

|                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                 |                                                 |                                                                                                                                                                                 |                                                                       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|-------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|
| 19<br>20<br>21<br>22<br>23<br>24<br>25<br>26<br>27<br>28                                                                                                                        | <table border="1"><tr><td>Last day for Defendants to provide Settlement Administrator with Aggrieved Employee information</td><td>Within 7 calendar days after the Effective Date</td></tr><tr><td>Last day for Settlement Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees</td><td>Within 7 calendar days after receiving Aggrieved Employee information</td></tr></table> | Last day for Defendants to provide Settlement Administrator with Aggrieved Employee information | Within 7 calendar days after the Effective Date | Last day for Settlement Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees | Within 7 calendar days after receiving Aggrieved Employee information |
| Last day for Defendants to provide Settlement Administrator with Aggrieved Employee information                                                                                 | Within 7 calendar days after the Effective Date                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                 |                                                 |                                                                                                                                                                                 |                                                                       |
| Last day for Settlement Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees | Within 7 calendar days after receiving Aggrieved Employee information                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                 |                                                 |                                                                                                                                                                                 |                                                                       |

|                                                                                                                                                                                                                    |                                                                                                                                                                                                     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Last day for Defendants to fund Gross Settlement Amount                                                                                                                                                            | Within 14 calendar days after the Settlement Administrator calculates and reports to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees |
| Last day for Settlement Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing                                                                                 | Within 7 calendar days after Defendants have funded the settlement                                                                                                                                  |
| Last day for Settlement Administrator to deliver payment of Plaintiffs' Counsel's attorney's fees and costs, PAGA Payment, Enhancement Payments Settlement Administrator Costs, and payment to Aggrieved Employees | Within 7 calendar days after Defendants have funded the settlement                                                                                                                                  |
| Last day for Aggrieved Employees to cash settlement checks                                                                                                                                                         | 180 calendar days after issuance of checks to Aggrieved Employees                                                                                                                                   |
| Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiary                                                                                                 | Within 14 calendar days after settlement check cashing deadline                                                                                                                                     |
| Last day for Settlement Administrator to provide Parties with compliance declaration                                                                                                                               | Within 21 calendar days after settlement check cashing deadline                                                                                                                                     |

IT IS FURTHER ORDERED that this action be dismissed with prejudice with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement pursuant to California Civil Procedure Code section 664.6.

IT IS SO ORDERED.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Judge of the Superior Court