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Attorneys for Plaintiffs ANGEL KYRAIKIDES; and FRANCISCO GASTELUM

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

ANGEL KYRIAKIDES; and FRANCISCO
GASTELUM, in a Representative capacity
only, and on behalf of other members of the
general public similarly situated,

Plaintiff,

CUMMING CHEVROLET, a California
Corporation, and DOES 1-10, inclusive

Defendants.

Case No. 37-2022-00045463-CU-OE-CTL

**SETTLEMENT AGREEMENT AND
RELEASE**

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I. DEFINITIONS

“Action” means Plaintiffs’ Private Attorneys General Act of 2004 civil action filed in the Superior Court of the State of California, County of San Diego entitled, *Angel Kyriakides v. Cumming Chevrolet, et al.*, Case No. 37-2022-00045463-CU-OE-CTL.

“Defense Counsel” means Spencer C. Skeen, Tim L. Johnson, and Cameron J. Davila of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

“Final Payment Date” of the Settlement means the date upon which Defendant must fund monetary portion of the Gross Settlement Fund: Defendant will fund 10 calendar days after the Effective Date.

“PAGA” means the California Labor Code Private Attorneys General Act of 2004, codified at California Labor Code §§ 2698 et seq.

“PAGA Settlement Members” means all current and former employees employed by Defendant, either directly or as a joint employer, in the State of California during the PAGA Period. No employee may opt out of being a PAGA Settlement Member. Defendant represents that the total

number of pay periods between the PAGA Settlement Members is approximately 4,300. If the size of the PAGA Pay Periods of the PAGA Settlement Members exceeds 4,300 by more than 10% as of the Effective Date, the monetary portion of the Gross Settlement Amount will increase by a proportionate percentage. For example, if the PAGA Pay Periods of the PAGA Settlement Members exceeds 4,300 by 15% as of the Effective Date, the monetary portion of the Gross Settlement will increase by 5%. Alternatively, Defendant shall have the option to have the release date become the date that the pay periods between PAGA Settlement Members exceeds 4,300, rather than the Effective date.

“Plaintiffs” means Angel Kyriakides and Francisco Gastelum, individually and in their capacity as a representative of the State of California on behalf of other aggrieved employees.

“Plaintiffs’ Counsel” means Eric K. Yaeckel and Ryan T. Kuhn of Sullivan & Yaeckel Law Group, APC.

“Parties” means Plaintiffs and Defendant.

“Released Claims” means any claims to recover civil penalties under PAGA, whether known or unknown, to recover wages, damages, penalties, attorney fees, litigation costs, restitution, or equitable relief, which Plaintiffs and/or the PAGA Settlement Members alleged, or could have alleged, against the Released Parties, arising out of the facts, circumstances, and primary rights in the operative Complaint and PAGA Notice Letter in this Action.

“Released Parties” means Defendant and all of their past and present owners, officers, directors, shareholders, employees, agents, assigns, attorneys, administrators, heirs, estates, insurers, parent companies, subsidiaries, and affiliates, and their respective predecessors, successors, assigns, and any individual or entity which could be jointly liable with Defendant.

“Settlement Administrator” means CAC Services, LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.

II. RECITALS

A. On August 31, 2022, Plaintiffs’ Counsel sent a letter to the LWDA on behalf of Plaintiffs under California Labor Code § 2699.3. Plaintiffs sought to represent themselves and all

1 PAGA Settlement Members. Never did the LWDA indicate its intention to investigate the alleged
2 violations referenced in the letter.

3 B. On November 9, 2022, Plaintiffs filed a Complaint in the Superior Court for the State
4 of California, County of San Diego, alleging claims for penalties under PAGA.

5 C. In the Operative Complaint, Plaintiffs allege civil penalties pursuant to PAGA for the
6 following: (1) meal and rest period violations; (2) minimum wage violations; (3) overtime violations;
7 (4) wage statement violations; (5) failure to reimburse business expenses; and (6) failure to pay
8 wages upon separation, all in violation of Labor Code sections 201-203, 226, 226(a), 226.7, 510,
9 512, 1194, 1197.1, 1198.5, and 2802, as well as IWC Wage Order 7, and any other applicable wage
10 orders, codified as Title 8, California Code of Regulations, section 11070 *et seq.*

11 D. The Parties subsequently agreed to engage in mediation, which took place on June
12 16, 2023, with experienced wage and hour, and representative action mediator, the Michael D.
13 Young, Esq. The Parties engaged in formal and informal discovery before the mediation. The Parties
14 also engaged in extensive settlement negotiations at the mediation, which involved substantial offers
15 and counteroffers between the Parties. While the matter did not settle at the mediation, continued
16 negotiations assisted by Mr. Young resulted in this Settlement.

17 E. Counsel for all Parties have thoroughly investigated the facts relating to the claims
18 alleged in the operative Complaint and made a thorough study of the legal principles applicable to
19 the claims asserted against Defendant. Plaintiffs' Counsel concluded the Settlement is fair,
20 reasonable, and adequate, given all known facts and circumstances, including the defenses asserted
21 by Defendant, potential adverse findings regarding liability, and numerous potential appellate issues.

22 F. Defendant denies and continue to deny, every claim and contention alleged in the
23 Action, and have always maintained that they never engaged in any unlawful acts regarding the
24 matters alleged in the Action.

25 NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set
26 forth, the Parties agree:

1 **III. NON-ADMISSION OF LIABILITY**

2 Based on the factual and legal issues involved, the expense and time necessary to prosecute
3 the Action through trial, the risks, uncertainty, and costs of further prosecution, the difficulty of proof
4 necessary to establish a manageable group for purposes of liability, and the relative benefits to the
5 PAGA Settlement Members of an expeditious resolution to the Action, the Parties have concluded
6 that the terms set forth in this Settlement are fair, reasonable, adequate, and in the best interests of
7 the PAGA Settlement Members.

8 By entering into this Settlement, Defendant denies any liability for any of the claims in the
9 Action, and any other potential or unknown claims based on wage and hour violations under
10 California or federal law. Neither this Settlement, nor any document referred to or contemplated
11 herein, nor any action taken to carry out this Settlement, may be construed as, or may be used as, an
12 admission, concession, or indication by or against Defendant of any unlawful conduct, fault,
13 wrongdoing or liability whatsoever. Defendant specifically denies that they have engaged in any
14 unlawful or wrongful conduct against Plaintiffs or the PAGA Settlement Members.

15 **IV. TERMS OF THE PAGA SETTLEMENT**

16 **A. Gross Settlement Amount**

17 Defendant shall pay a monetary settlement payment in a total amount not to exceed \$50,000
18 (“Gross Settlement Amount”). The Gross Settlement Amount is the maximum monetary amount
19 Defendant can be required to pay under this Settlement. The Gross Settlement Amount includes the
20 Individual PAGA Payments to the Aggrieved Employees, the Enhancement to the named Plaintiffs,
21 LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses
22 Payment, and the Administration Expenses Payment. Defendant has no obligation to pay the Gross
23 Settlement Amount prior to the Effective Date of this Agreement. The Administrator will disburse
24 the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any
25 claim as a condition of payment. The Gross Settlement Amount shall be all-in and none of the Gross
26 Settlement Amount will revert to Defendant.

1 **B. Additional Measures Taken by Defendant**

2 Besides paying the Gross Settlement Amount, Defendant will take measures to ensure
3 continued compliance with Labor Code § 226.7 (including: relieve employees of all duties, allow
4 employees to leave the premises, and/or make rest period and meal period penalty payments for
5 interrupted, on-call, or work-disrupted meal/rest periods); Labor Code § 512; Labor Code § 510;
6 Labor Code § 1194; Labor Code § 1198; Labor Code § 226; Labor Code §§ 201 and 202; and Labor
7 Code § 2802 (updating reimbursement policies). The Parties agree the additional measures taken by
8 Defendant will cost Defendant no less than \$75,000, which the Parties further agree constitutes
9 additional good and valuable consideration for the Released Claims. The total value of the Settlement
10 (monetary and non-monetary) is therefore \$125,000 (“Total Settlement Value”).

11 In taking these additional measures, Defendant makes no admission it has engaged, or is now
12 engaging, in any unlawful conduct. The Released Parties dispute any unlawful conduct occurred.
13 Such measures are not an admission of liability, but constitute additional consideration in the
14 Settlement of disputed claims that remain untested. It is understood there has been no trial or
15 adjudication of any issue of fact or law relating to Plaintiffs’ claims, and that the Released Parties
16 want to avoid further time and expense by entering into this Settlement.

17 **C. Settlement Administrator Fees and Costs**

18 The Settlement Administrator shall calculate and distribute payments to Individual PAGA
19 Settlement Members and to the LWDA. The Settlement Administrator will skip trace and re-mail all
20 returned, undeliverable mail within seven days of receiving notice that the mailing was
21 undeliverable. The Settlement Administrator will also handle payment of Plaintiffs’ Counsel’s
22 attorney fees and costs as approved by the Court. Settlement Administrator’s Fees are estimated to
23 be \$3,200 and are to be paid from the Gross Settlement Amount. To the extent the Settlement
24 Administrator’s Fees and Costs are less or the Court approves payment less than \$3,200, the
25 Administrator will allocate the remainder to the PAGA Fund.

26 **D. Attorney Fees and Costs**

27 \$15,000 (*i.e.*, 30% of the Total Settlement Value) shall be allocated as attorney fees and
28 \$9,526.14 shall be allocated as costs payable to Sullivan & Yaeckel Law Group, APC and issued via

an IRS Form 1099. The Settlement Administrator will wire transfer the payment to Plaintiffs' Counsel. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. If the Court approves Plaintiffs' Counsel Fee and Costs Payment less than the amounts requested, the Administrator will allocate the remainder to the PAGA Fund. Released Parties shall have no liability to Plaintiffs' Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Plaintiffs' Counsel Fee and Costs Payment.

Plaintiffs' Counsel assumes full responsibility and liability for taxes owed on the Plaintiffs' Counsel Fee and Costs Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

E. PAGA Fund

\$12,273.86 of the Gross Settlement Amount shall be allocated toward payment to the LWDA and PAGA Settlement Members ("PAGA Fund"). 75% of the PAGA Fund (\$9,205.40) will be attributed to the LWDA's share and 25% of the PAGA Fund (\$3,084.46) will be allocated among the PAGA Settlement Members based on their proportionate shares of pay periods during the PAGA Period as set forth in Section V.C., *infra*.

F. Service Enhancement

From the Gross Settlement Amount, Plaintiffs' Counsel may seek from the Court a Service Enhancement award to each Plaintiffs not to exceed \$5,000 each, which Defendant will not oppose.

V. COMPUTATION AND DISTRIBUTION OF PAGA FUND

A. PAGA Settlement Members Data

Within ten (10) days of the Effective Date, Defendant will simultaneously deliver the PAGA Settlement Members' Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect PAGA Settlement Members' privacy rights, the Administrator must maintain the PAGA Settlement Members' Data in confidence, use the PAGA Settlement Members' Data only for purposes of this Settlement and for no other purpose, and restrict access to the PAGA Settlement Members' Data to Administrator employees who need access to the PAGA Settlement Members' Data to effect and perform under this Agreement.

1 **B. Payment of PAGA Fund**

2 Within 15 days after the Final Payment Date, the Settlement Administrator shall distribute
3 the PAGA Fund to the LWDA and to the PAGA Settlement Members. Payments to PAGA
4 Settlement Members shall be made via U.S. Mail to their last known addresses.

5 **C. Formula for Calculating Shares of the PAGA Fund**

6 The portion of the PAGA Fund to be paid to each PAGA Settlement Member shall be
7 determined based on the following pay period formula.

8 The payment to PAGA Settlement Members will be based on the number of pay periods
9 worked by each PAGA Settlement Member during the PAGA Period. Partial pay periods will be
10 rounded up to the nearest full pay period. The value of a pay period will be calculated by dividing
11 the portion of the PAGA Fund paid to PAGA Settlement Members by the total number of pay periods
12 worked by all PAGA Settlement Members during the PAGA Period. The resulting pay period value
13 will then be multiplied by the number of pay periods worked by each PAGA member to calculate
14 the Individual PAGA payment (“Individual PAGA Payments”). Defendant’s records shall be
15 determinative for purposes of calculating the number of pay periods worked and any payments to
16 PAGA Settlement Members.

17 **D. Distribution of PAGA Fund**

18 The Settlement Administrator shall pay an amount equivalent to 75% of the PAGA Fund to
19 the LWDA, or as otherwise directed by the Court. A copy of the check that the Settlement
20 Administrator mails to the LWDA shall be provided to Plaintiffs’ Counsel within five days of
21 mailing.

22 The Settlement Administrator shall also distribute the Individual PAGA Payments to each
23 PAGA Settlement Members, or as otherwise directed by the Court, by postmarked First Class U.S.
24 Mail. The Settlement Administrator shall maintain a list of the postmarked dates for the original
25 mailing of each Individual PAGA Payment to the PAGA Settlement Members and a list of PAGA
26 Settlement Members who did not receive the Individual PAGA Payments, if any, due to the inability
27 to locate a valid address.

1 All settlement checks will remain valid and negotiable for 180 days from the date of their
2 execution. After 180 days, any uncashed checks will be void and shall be paid to Legal Aid Society
3 of San Diego, Inc. in the names of the PAGA Settlement Members who did not cash such checks.
4 Such distribution satisfies California Code of Civil Procedure § 384 requirements.

5 The Settlement Administrator will prepare and issue IRS Form 1099s to PAGA Settlement
6 Members who received an Individual PAGA Payment. The payment of Individual PAGA Payments
7 shall not obligate Defendant to confer any additional benefits or make any additional payments to
8 the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this
9 Agreement.

10 **VI. RELEASE OF CLAIMS**

11 **A. Claims Released by the LWDA and PAGA Settlement Members**

12 Upon the Effective Date, the LWDA, the State of California and PAGA Settlement Members,
13 including Plaintiffs, fully release and forever discharge the Released Parties from any Released
14 Claims during the PAGA Period. The Parties agree that the settlement of this Action shall be effective
15 as a full and final accord and satisfaction, settlement of, and as a bar to, the claims for civil penalties
16 for resulting from the Labor Code violations alleged, or that could have been alleged, against
17 Defendant arising out of the facts, circumstances, and primary rights in the operative Complaint. The
18 Parties further agree the settlement of this Action shall be binding on Plaintiffs, the PAGA Settlement
19 Members, the LWDA, the State of California, Defendant, and the Released Parties. Because of this
20 release, the PAGA Settlement Members cannot sue under, or recover in any other action brought
21 under PAGA, California Labor Code §§ 2698 *et seq.*, for any violations of the Released Claims that
22 took place during the PAGA Period. This includes PAGA claims that occurred during the PAGA
23 Period for: : (1) meal and rest period violations; (2) minimum wage violations; (3) overtime
24 violations; (4) wage statement violations; (5) failure to reimburse business expenses; and (6) failure
25 to pay wages upon separation, all in violation of Labor Code sections 201-203, 226, 226(a), 226.7,
26 510, 512, 1194, 1197.1, 1198.5, and 2802, as well as IWC Wage Order 7, and any other applicable
27 wage orders, codified as Title 8, California Code of Regulations, section 11070 *et seq.*

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

5 **B. Tax Treatment**

6 PAGA Settlement Members will assume any tax obligations or consequences that may arise
7 from this Settlement. PAGA Settlement Members release any and all claims they have or may have
8 against Defendant or Released Parties for any claims, demands, deficiencies, levies, assessments,
9 executions, judgments, penalties, taxes, indemnification, and any other recoveries related to any
10 payments made under this Settlement or any compensation provided at any time by Defendant or
11 any of the Released Parties. The PAGA Settlement Members shall not contact Defendant, any of the
12 Released Parties, or Defense Counsel.

13 **VII. MISCELLANEOUS PROVISIONS**

14 **A. Mutual Full Cooperation**

15 Plaintiffs, Defendant, Plaintiffs' Counsel, and Defense Counsel agree to cooperate fully with
16 each other to accomplish the terms of this Settlement, including, but not limited to, execution of such
17 documents, and to take such other action as may reasonably be necessary to implement the terms
18 herein. The Parties agree to use their best efforts and any other efforts that may become necessary
19 by Order of the Court, or otherwise, to effectuate this Settlement.

20 **B. Plaintiffs' Counsel Responsibilities**

21 Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining
22 approval of this Settlement under Labor Code Section 2699, subd. (f)(2)). Plaintiffs' Counsel and
23 Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or
24 motion for approval of this Settlement to be heard on October 1, 2023 or shortly thereafter.

25 **C. Signatories' Authority**

26 The signatories hereto represent they are authorized to enter into this Settlement.
27
28

1 **D. Binding Nature of the Settlement**

2 This Settlement shall be binding upon, and inure to the benefit of, the successors or assigns
3 of the Released Parties. Plaintiffs represents covenant, and warrant they have not directly or
4 indirectly, assigned, transferred, or encumbered any claim, demand, action, cause of action, or rights
5 released in the Released Claims in this Settlement. This Settlement shall be binding upon Plaintiffs
6 and the PAGA Settlement Members. This Settlement may be amended or modified only by a written
7 instrument signed by Plaintiffs and Defendant. No rights under this Settlement may be waived except
8 in writing.

9 **E. Joint Drafting of Settlement Documents**

10 The Parties arrived at this Settlement because of arm's-length negotiations, considering all
11 relevant factors, present and potential. This Settlement has been drafted jointly by Plaintiffs' Counsel
12 and Defense Counsel and, therefore, in any construction or interpretation of this Settlement, the same
13 shall not be construed against any of the Parties.

14 **F. Execution of the Settlement Agreement**

15 All executed copies of this Settlement and photocopies thereof shall have the same force and
16 effect and shall be as legally binding and enforceable as the original.

17 **G. No Press Release or Publicity Regarding Terms of the Settlement**

18 Plaintiffs and Plaintiffs' Counsel, Defendant, and Defense Counsel agree that they will issue
19 no media or press release, initiate any contact with the media or the press, respond to any media or
20 press inquiry, or have any communications with the media or the press about the fact, amount, or
21 terms of this Settlement. Plaintiffs and Plaintiffs' Counsel shall not publicize or refer to the fact or
22 amount of the Settlement on their websites, social media, any other marketing materials, or legal
23 publications. Plaintiffs and Plaintiffs' Counsel will not state on their websites, social media, any
24 other marketing materials, or legal publications, that Defendant engaged in any act contrary to
25 California law, or denied payment owed to its employees, or otherwise committed any violations of
26 the California Labor Code or any other local, state, or federal law, otherwise disparage Defendant,
27 or otherwise identify Defendant. Defendant may report the Settlement or results of this lawsuit if
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1 required to do so by public disclosure regulatory requirements, or with respect to any financial or
2 other disclosures, which in their judgment are necessary.

3 **H. Continuing Jurisdiction of the Court**

4 The above-entitled Court shall retain jurisdiction over all disputes between and among the
5 Parties arising out of the Settlement, including but not limited to the interpretation and enforcement
6 of the terms herein.

7 **I. Advice of Counsel**

8 Each Party represents and agrees that they have been advised or are fully aware of their right
9 to discuss all aspects of this Agreement with their independent attorney before signing this
10 Agreement, that each Party has carefully read and fully understands all of the provisions of this
11 Agreement, and that each Party is voluntarily, and without fraud, duress, or undue influence, entering
12 into this Agreement.

13 **PLAINTIFFS AND PLAINTIFFS' COUNSEL**

14
15 Dated: _____ 2023

Angel Kyriakides

16
17 Dated: _____ 2023

Francisco Gastelum

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19
20 Approved as to Form:

21
22 Dated: _____ 2023

SULLIVAN & YAECKEL LAW GROUP, APC

23
24 By: _____

Eric K. Yaeckel
Attorneys for Plaintiffs

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DEFENDANT AND DEFENDANT'S COUNSEL

Dated: _____ 2023

CUMMING CHEVROLET
Authorized Agent

Approved as to Form:

Dated: _____ 2023

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: _____
Spencer C. Skeen
Tim L. Johnson
Cameron J. Davila
Attorneys for Defendant