

David P. Myers, State Bar No. 206137
Justin Crane, State Bar No. 251107
Ann Hendrix, State Bar No. 258285
THE MYERS LAW GROUP, A.P.C.
9327 Fairway View Place, Suite 100
Rancho Cucamonga, CA 91730
Telephone: (909) 919-2027
Facsimile: (888) 375-2102

Attorneys for Plaintiff Michael Mitsch

TIM M. AGAJANIAN (SBN 130508)
THOMAS J. MCNAMARA (SBN 289883)
ROPERS, MAJESKI, KOHN & BENTLEY
445 South Figueroa Street, Suite 3000
Los Angeles, CA 90071-1619
Telephone: (213) 312-2000
Facsimile: (213) 312-2001
Email: tim.agajanian@rmkb.com
thomas.mcnamara@rmkb.com

Attorneys for Defendant Toyota of Riverside

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

MICHAEL MITSCH,

Plaintiff,

vs.

TOYOTA OF RIVERSIDE, a California
corporation; and DOES 1 through 10

Defendants.

Case No. RIC1312716
(JW Case#A209163-25)

Assigned for All Purposes to:
Hon. Craig G. Riemer
Dept. 5

**JOINT NOTICE OF MOTION AND
MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND DISMISSAL OF
ACTION; [PROPOSED] ORDER**

Date: 9/6/2017
Time: 8:30 a.m.
Dept.: 5

Complaint Filed: November 12, 2013

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

The Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities, the Declaration of Ann Hendrix and the papers and records on file herein, and on such oral and documentary evidence as may be presented at the hearing of the motion.

I. INTRODUCTION

The settlement is for a total of two hundred and ten thousand dollars (\$210,000.00).
(Exh. B).

Plaintiff alleges that Defendant employed Plaintiff as a Financial Director for its auto dealership. Plaintiff alleges that he complained to Defendants about unlawful practices against consumers and banks. Plaintiff alleges that Defendants failed to stop the unlawful practices and that he was expected to participate in them. Plaintiff was then constructively discharged on or about November 12, 2012.

JOINT NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT

1 Plaintiff filed the current action on November 12, 2013 alleging six (6) causes of action
2 for: (1) Constructive Discharge in Violation of Public Policy, (2) Unlawful Retaliation in
3 Violation of Labor Code §1102.5, (3) Failure to Compensate for All Wages Earned, (4) Failure
4 to Provide Accurate Wage Statements Under Labor Code §226, (5) Failure to Pay Wages Timely
5 Upon Termination Under Labor Code §203, (6) Unfair Business Practices in Violation of Cal.
6 Bus. & Prof. Code §§17000, *et seq.* and §§17200, *et seq.*, and (7) Private Attorneys General Act
7 (“PAGA”).

8 The parties reached a settlement and the settlement agreement was finalized on July 26,
9 2017.

10 **III. LEGAL STANDARD**

11 **A. Settlement of PAGA Claims**

12 Pursuant to Labor Code §2699(1)(2), “The superior court shall review and approve any
13 settlement of any civil action filed pursuant to this part. The proposed settlement shall be
14 submitted to the agency at the same time that it is submitted to the court.” *Id.*

15 Unless the Labor Code provides otherwise, civil penalties recovered by an aggrieved
16 employee shall be distributed with 75% of the civil penalty to the Labor Workforce Development
17 Agency and 25% to the aggrieved employee. *See* Labor Code §2699(i).

18 In reviewing the PAGA settlement portion, the Court is to consider the “rationale for
19 allocating” specific sums of the proposed settlement fund to the PAGA claim.” *O'Connor v.*
20 *Uber Techs., Inc.*, 2016 U.S. Dist. LEXIS 110281 at *69 (N.D. Cal. 2016). Generally, the Court
21 must evaluate the adequacy of compensation to the individual plaintiff as well as the adequacy of
22 the settlement in view of the purposes and policies of PAGA by applying a sliding scale. *Id.* at
23 *72.

24 **B. Settlement of PAGA Claim is Fair and Reasonable**

25 The Parties’ settlement allocates one thousand five hundred dollars (\$1500.00) for the
26 PAGA cause of action. The PAGA claim is limited to Plaintiff as the sole “aggrieved employee”
27 and the LWDA in regards to pursuing civil penalties on behalf of Plaintiff as an “aggrieved
28

employee.” (See Exh. A).

The potential verdict value of Plaintiff’s PAGA claim is based on the PAGA relevant time period (PAGA RTP) which constitutes alleged California Labor Code violations against Plaintiff for the time period of February 1, 2009 to November 12, 2012. The potential verdict value under PAGA constitutes approximately \$10,000.00 in total non-duplicative civil penalties for the PAGA RTP.

This value is based on a \$10,000 civil penalty for Labor Code 1102.5 retaliation. This potential verdict value excludes overlapping recoveries of civil penalties and civil penalties not at-issue.

Applying a sliding scale between the adequacy of compensation to the individual plaintiff and the purposes and policies of PAGA, it is evident that a one thousand five hundred dollars (\$1500.00) allocation to PAGA is warranted in this case. Plaintiff was a single aggrieved employee of a small employer. The PAGA allocation is representative of fairness and arms-length negotiation. Defendants are a small business and the purpose of PAGA is not to bankrupt small employers or deprive “aggrieved employees” of the earned wages. The resolution here provides a fair and reasonable settlement agreement of Plaintiff’s PAGA cause of action as the current settlement provides an avenue to enforce Plaintiff’s rights and the Labor Code, while at the same time not consuming earned wages and/or damages incurred by Plaintiff.

C. Settlement Provided to the LWDA and The Arbitrator

A copy of the settlement and this Joint Motion is being provided to the LWDA concurrently with the filing of the same with this Court. (Decl. Hendrix ¶3, Exh. B). A copy of the settlement and this Joint Motion is also being provided to the Arbitrator, Hon. Linda Quinn (Ret.), concurrently with the filing of the same with this Court. The PAGA statute does not provide for approval by an Arbitrator, rather only by the superior court. Cal. Lab. Code §2699(1)(2). Because the case was arbitrated, however, parties err on the side of caution and submit this Joint Motion to both the Court as required by PAGA, and the Arbitrator who presided over the case in arbitration.

IV. CONCLUSION

1 Based on the foregoing reasons, the parties respectfully request that the Court **grant** this
2 Motion and (1) approve the settlement under PAGA, and (2) dismiss, with prejudice, Plaintiff's
3 claims on behalf of himself, and the California Labor Workforce Development Agency as stated
4 in Plaintiff's PAGA notice, against Defendant.

5
6 Dated: August 2, 2017

Respectfully Submitted,

THE MYERS LAW GROUP, A.P.C.

8
9 By: Ann Hendrix

10 David P. Myers
11 Justin Crane
12 Ann Hendrix
13 Attorneys for Plaintiff Michael Mitsch

14 Dated: August 2, 2017

Respectfully Submitted,

16 ROPERS, MAJESKI, KOHN & BENTLEY

17
18 By: Tom

19 Tim M. Agajanian
20 Thomas J. McNamara
21 Attorneys for Defendant Toyota of Riverside
22
23
24
25
26
27
28

1 Michael Mitsch v. Toyota of Riverside
2 RSC Case No. RIC1312716

3 **PROOF OF SERVICE**

4 I am employed in the office of a member of the bar of this Court at whose direction this
5 service was made. I am over the age of 18 and not a party to the within action; my business
6 address is 9327 Fairway View Place, Ste. 100, Rancho Cucamonga, California 91730.

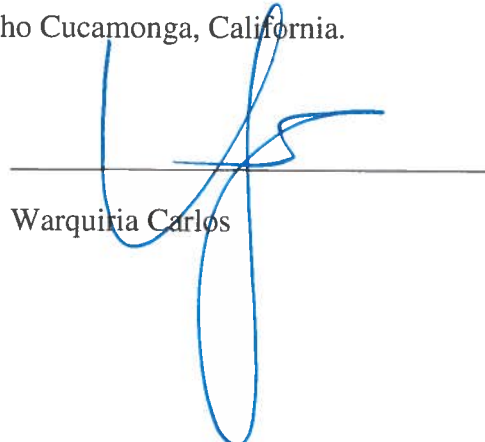
7 On August 2, 2017, I served the foregoing document described as **JOINT NOTICE OF**
8 **MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT AND**
9 **DISMISSAL OF ACTION; [PROPOSED] ORDER** by serving interested parties in this action
10 by placing a true copy thereof in a sealed envelope, postage prepaid, addressed as follows:

11 Thomas J. McNamara, Esq.
12 Tim M. Agajanian, Esq.
13 **Ropers, Majeski, Kohn & Bentley**
14 445 South Figueroa St., Suite 3000
15 Los Angeles, CA 90071

16 I am "readily familiar" with the firm's practice of services of process. Under that
17 practice, this document would be deposited with U.S. Postal Service on that same day with
18 postage thereon fully prepaid in the ordinary course of business.

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

21 Executed on August 2, 2017 at Rancho Cucamonga, California.

22 
23 Warquiritia Carlos
24
25
26
27
28