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6 Attorney for Plaintiff
Michael Valdivieso

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10
11 MICHAEL VALDIVIESO, on behalf of himself) NO. 23GDCV00191
and all aggrieved employees,)
12 Plaintiff,) DECLARATION OF ADAM ROSE IN
13 v.) SUPPORT OF STIPULATION TO
UNIVERSAL AUTO GROUP, INC.. and DOES) APPROVE PAGA SETTLEMENT
14 1 to 100,)
15 Defendants.)
16

17
18
19 I, Adam Rose, declare the following:

20 1. I am one of the attorneys representing the plaintiff. I have personal knowledge of the facts
21 in this declaration and if called on to testify about the facts I would competently do so.

22 2. Attached as Exhibit 1 is a true and correct copy of the PAGA settlement agreement.

23 3. Attached as Exhibit 2 is a true and correct copy of the notice that will accompany the
24 checks to the aggrieved employees.

25 4. I uploaded this declaration containing the settlement agreement to the LWDA website at the
26 same time as filing the stipulation to approve the PAGA settlement.

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
28 and correct. Executed on December 27, 2023 /s/ Adam Rose

Exhibit 1

SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIM

This Settlement Agreement and Release of PAGA Claim (“Settlement Agreement”) is made and entered into by and between Plaintiff Michael Valdivieso, as a representative for the State of California and on behalf of other Aggrieved Employees, and Defendant Universal Auto Group, Inc. (collectively, the “Parties”), and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court’s approval.

A. Definitions.

1. “Action” or “Lawsuit” means and refers to *Michael Valdivieso v. Universal Auto Group, Inc., et al.*, Los Angeles County Superior Court Case Number 23GDCV00191 filed on January 31, 2023.
2. “Agreement,” “Stipulation,” or “Settlement Agreement,” shall mean this Settlement Agreement, including any attached Exhibits.
3. “Aggrieved Employees” means and refers to all persons employed by Defendant in California as a service advisor at any time during the period from November 22, 2021 to the Effective Date of the Settlement.
4. “Aggrieved Employees Settlement Proceeds” means the twenty-five percent (25%) of the Net Settlement Amount that shall be paid to the Aggrieved Employees.
5. “Complaint” (also referred to as the “Action” or “PAGA Action”) means and refers to Case No. 23GDCV00191 pending in the Superior Court, County of Los Angeles, entitled “*Michael Valdivieso v. Universal Auto Group, Inc., et al.*,” which alleges the Operative Claims.
6. “Court” (or “Judge”) means the California Superior Court, County of Los Angeles.
7. “Defendant” (or “UAG”) means and refers to Universal Auto Group, Inc., which operates Subaru and Mitsubishi automotive dealerships and service centers in California.
8. “Defendant’s Counsel” means and refers to Scali Rasmussen, a PC.
9. “Effective Date” means the date the Court enters the Order approving the Settlement.
10. “Order” refers to the order of the Court granting approval of this Settlement Agreement on substantially the terms provided herein or as may be modified by subsequent agreement of the Parties.
11. “LWDA Settlement Proceeds” means the seventy-five percent (75%) of the Penalties Fund that shall be paid to the Labor Workforce and Development Agency.
12. The “Net Settlement Amount” is defined as the Settlement Amount less attorneys’ fees and litigation costs advanced by Plaintiff’s Counsel, and Settlement Administrator costs.
13. “Notice” means the notice that will be sent to the Aggrieved Employees after the Order is entered by the Court, and shall be similar to the form attached hereto as Exhibit “A.”
14. “Operative Claims” means and refers to the following claims and causes of action alleged in the Complaint for PAGA penalties based on violations of Labor Code sections 1197, 1197.1, 226, 246, 226.3, 226.7, 201, 202, 203, 510, 512, 558, for off the clock work, minimum wage violations, overtime violations, wage statement violations, waiting time penalties, sick pay rate violations, and meal and rest break violations.
15. “Parties” or “Settling Parties” mean Plaintiff, the Aggrieved Employees, and Defendant, collectively.

16. “Plaintiff’s Counsel” is Adam Rose and Manny Star of Frontier Law Center.
17. “Released Parties” means Defendant UAG and its owners, officers, directors and employees.
18. “Settlement Administrator” means and refers to the entity that will administrator the settlement, Phoenix Class Action Administration Solutions.
19. “Settlement Amount” means the maximum settlement amount that Defendant will pay in connection with this settlement, which is sixty thousand U.S. Dollars (\$60,000).
20. “Release Period” means November 22, 2021 through the Effective Date of the Settlement.

B. General.

21. On November 22, 2022, Plaintiff gave written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the Labor Code alleged to have been violated. The LWDA did not assert jurisdiction over the claims.
22. On January 31, 2023, Plaintiff filed his PAGA Lawsuit alleging violations of the Operative Claims under PAGA.
23. Around March 2023, Plaintiff initiated arbitration with JAMS for his individual FEHA claim (“the FEHA arbitration”).
24. The Parties engaged in discussions regarding the Operative Claims as well as Defendant’s defenses, policies, and ownership structure.
25. Defendant denies Plaintiff’s claims and allegations, denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, and denies that Plaintiff can proceed with his claims on a representative basis.
26. The parties reached a settlement around September 2023. Plaintiff’s FEHA arbitration is being settled separately. These funds will not apply to that settlement.
27. Plaintiff’s Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the interest of the LWDA and Aggrieved Employees in light of known facts and circumstances, including the risk of significant delay, uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues.
28. The Parties agree that neither the Parties’ settlement, this Agreement, nor the acts to be performed or judgments to be entered pursuant to the terms of the settlement and Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or law or liability on the claims or allegations in the Action.
29. California Labor Code § 2699(l)(2) provides that “The superior court shall review and approve any settlement of any civil action filed pursuant to this part.”

30. In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

C. Terms of Settlement.

31. Subject to the Court’s approval of the Settlement pursuant to Labor Code § 2699(l)(2), The Parties agree to settle the Operative Claims in this Action for the maximum of \$60,000.00 (“Settlement Amount”). This Settlement Amount is inclusive of all settlement payments to the State of California and Aggrieved Employees; Plaintiff’s Counsel’s attorneys’ fees and litigation costs (as related to the PAGA claims only) and Settlement Administrator costs.

(a) **Settlement Administrator Costs:** The costs associated with settlement administration (e.g. preparing and mailing payments to LWDA and Aggrieved Employees, tax documentation, etc.) shall be paid from the Settlement Amount and shall not exceed \$1,750. The parties agree to use Phoenix Class Action Administration Solutions as the Settlement Administrator (or agree to select a Settlement Administrator based on low bid or by mutual agreement).

(b) **Attorneys' Fees and Costs:** The Parties agree that, subject to the Court's review and approval, Plaintiff's Counsel will be paid one-third of the Settlement Amount as attorney's fees (\$20,000), plus actual litigation costs not to exceed \$737, incurred in connection with work performed to file the Action and obtain Court approval of the Settlement, which will be paid from the Settlement Amount.

(c) **Net Settlement Amount:** After deducting the amounts specified in items (a) and (b) from the Settlement Amount for attorneys fees and costs and Settlement Administrator fees and costs, the balance remaining will form the Net Settlement Amount (which totals \$37,513 if the amounts set forth above are approved by the Court). The Net Settlement Amount will be paid to the Labor and Workforce Development Agency ("LWDA") and the Aggrieved Employees in the following proportion: 75 percent (totaling \$28,134.75) to the LWDA and 25 percent (\$9,378.25) to the Aggrieved Employees. The 25 percent payable to the Aggrieved Employees will be distributed to the Aggrieved Employees in an equal share.

D. Release as to the Operative Claims and PAGA Action

32. Upon the Effective Date, Plaintiff, as the representative for the State of California, and the Aggrieved Employees will forever completely release and discharge the Released Parties of any and all Operative Claims for civil penalties under Labor Code § 2699 and Labor Code § 558 were alleged in the Action or could have been alleged based on the facts asserted in the Action ("Released Claims"). The time period governing these "Released Claims" shall be between November 22, 2021 through the Effective Date ("PAGA Release Period.")

33. Plaintiff shall prepare and file a First Amended Complaint to add a claim for PAGA penalties associated with a Labor Code section 246 violation, which was alleged in the PAGA Notice but was not claimed in the Complaint. Plaintiff's counsel shall send a draft of the FAC to defense counsel within 2 business days of this agreement being executed by Plaintiff.

34. Each Aggrieved Employee will be deemed to have made the foregoing Release as if by manually signing it. The Order and any Judgment in this action shall be binding on the PAGA Employees as to the Released Claims, including the PAGA Representative Claims and Labor Code § 558. A statement to this effect shall be included in the Notice sent to the PAGA Employees.

E. Release by Plaintiff

35. Plaintiff has entered into a separate Individual Settlement Agreement with Defendant for his individual (non-PAGA) claims, in exchange for a full release of all claims, known and unknown, from the beginning of time to the date of the Order, which shall become Effective on the date of the Order. The Parties agree that Plaintiff's separate individual settlement shall not affect or limit Plaintiff's ability or standing to serve as the representative/lead Plaintiff for the State of California in this Action and/or for this Settlement Agreement.

F. Settlement Approval and Implemental Procedures.

36. Plaintiff's Counsel shall prepare a stipulation seeking approval of the settlement pursuant to California Labor Code § 2699(1)(2).

37. Within ten days (10) calendar days after the Court enters the Order granting approval, Defendant will send to the Settlement Administrator a list of all Aggrieved Employees including each employee's: (1) full name; (2) last known address; and (3) social security number (the "Aggrieved Employees List"). This information shall be treated as and remain confidential and shall be used solely to manage the notice and payment process described herein, shall not be disclosed to anyone other than the Settlement Administrator.

38. Upon the Court's entry of the Order and receipt of the Aggrieved Employees List, the Settlement Administrator will perform all settlement administration duties, including (i) performing a National Change of Address ("NCOA") search on all former Aggrieved Employees to update the addresses of the Aggrieved Employees, (ii) issuing the Notice and payments to the Aggrieved Employees, (iii) issuing any required IRS forms, and (iv) issuing payment to the LWDA, Plaintiff's Counsel and Plaintiff.

39. UAG shall wire transfer the Settlement Amount to the Settlement Administrator, who will deposit the funds into the bank account of the Qualified Settlement Fund established by the Settlement Administrator in relation to this settlement, within 30 days after the Court has entered the Order, assuming that no appeal is filed. All settlement amounts to be paid to Plaintiff, Aggrieved Employees, Plaintiff's Counsel, the Settlement Administrator, and the California Labor and Workforce Development Agency shall be paid from this Qualified Settlement Fund.

40. The Settlement Administrator shall deduct the amount of approved attorneys' fees and costs, and the Settlement Administrator's costs from the Settlement Amount, to arrive at the Net Settlement Amount, which will be distributed as set forth herein.

41. Within ten (10) days of receiving the wire transfer from Defendant for each of the payments referenced herein, the Settlement Administrator shall mail the respective settlement checks to the Aggrieved Employees, Plaintiff's Counsel and LWDA, as set forth in the payment plan herein. The settlement checks mailed to the Aggrieved Employees will be accompanied with a letter explaining the payment and deadline to cash the check, and this letter will be in a format that is not materially different from the sample letter attached hereto as Exhibit "A."

42. Aggrieved Employees shall have 180 calendar days after mailing to cash their settlement checks. If any Aggrieved Employee's check is not cashed within that period, the check will be void and a stop-payment will be issued. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be paid to the DIR Unclaimed Property in the name of the Aggrieved Employee who did not cash the check. In such event, the Aggrieved Employee will be deemed to have waived irrevocably any right in or claim to his/her share, except that the Aggrieved Employee may claim the funds from the DIR Unclaimed Property Department. The release nevertheless will be binding upon Aggrieved Employees who do not cash their checks within the 180-day period. Neither Defendant, Defense Counsel, Plaintiff's Counsel nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code section 384, as the entire Net Settlement Amount will be paid out to the Aggrieved Employees. Therefore, Defendants will not be required to pay any interest on said amount. In the event that an Aggrieved Employee's

individual PAGA payment is distributed to the Controller of the State of California, the terms of this settlement and Release of Claims will nevertheless be binding upon that Aggrieved Employee.

43. All Settlement payments to Aggrieved Employees will be treated as payments in settlement of non-wage (civil penalty) claims and reported on IRS 1099 forms and corresponding state forms.

G. Miscellaneous Provisions.

44. **Voiding the Agreement:** The Court's refusal to approve the Settlement and/or making a fundamental change of the Parties' settlement shall render the entire Settlement Agreement voidable and unenforceable as to all Parties herein at the option of either Party. Notwithstanding, in the event the Court does not approve the PAGA Settlement, the Parties agree that they will attempt in good faith to resolve any concerns raised by the Court.

45. **Waiver:** The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

46. **Parties' Authority:** The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

47. **Mutual Full Cooperation:** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this PAGA Settlement Agreement shall use their best efforts, including all efforts contemplated by this PAGA Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this PAGA Settlement Agreement, the Parties, through their respective counsel shall take all necessary steps to secure the Court's approval of the PAGA Settlement, including Plaintiff's counsel preparing and filing the Stipulation and Proposed Order seeking approval, within two (2) weeks of the full execution of this Agreement.

48. **No Prior Assignments:** The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Settlement Agreement.

49. **No Admission:** Defendant denies any and all liability to Plaintiff, the Aggrieved Employees, and/or the LWDA in this Lawsuit, as to any and all causes of action that were asserted or that could have been asserted in this Action based on the same facts (under PAGA). Nonetheless, Defendant wishes to settle and compromise the matters at issue in the Complaint to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff, has determined that it is desirable and beneficial that Plaintiff's representative claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

50. **Binding Settlement:** Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further

disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

51. **Enforcement Actions:** Except as otherwise provided in this Settlement Agreement, in the event that one or more of the Parties to this Settlement Agreement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any enforcement actions.

52. **Notices:** Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To Plaintiff:

Adam Rose
Manny Star
[fill in contact info]

To Defendant:

Christian Scali
Jasmin Bhandari
Scali Rasmussen
300 S. Grand Ave., Suite 2750
Los Angeles, California 90071
Phone: (213) 239-5622
Fax: (213) 239-5623
Email: cscali@scalilaw.com

53. **Construction:** The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement Agreement.

54. **Captions and Interpretations:** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

55. **Modification:** This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

56. **Choice of Law:** This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

57. **Integration Clause:** This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

58. **Binding On Assigns:** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

59. **Counterparts:** This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic delivery shall be deemed an original.

12/05/23 | 4:47 PST

Dated: January ___, 2018

PLAINTIFF'S COUNSEL:

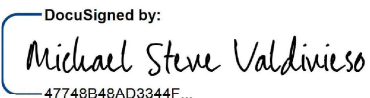
FRONTEIR LAW CENTER

By:  CAA1F185B992467...
ADAM ROSE

11/02/23 | 6:54 PDT

Dated: January ___, 2018

PLAINTIFF:

 47748B48AD3344F...
MICHAEL VALDIVIESO

Dated: 11/30/2023

DEFENDANT:

UNIVERSAL AUTO GROUP, INC.

By: 

Dated: December 1, 2023

DEFENDANT'S COUNSEL:

SCALI RASMUSSEN

By: 

JASMIN BHANDARI

END OF DOCUMENT

Exhibit 2



CLASS ACTION SETTLEMENT SOLUTIONS
P.O. Box 7208, Orange, CA 92863 Telephone (800) 523-5773

[Date]

Re: Payment From *Michael Valdivieso v. Universal Auto Group, Inc.* Los Angeles Superior Court Case No. 23GDCV00191

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuits entitled *Michael Valdivieso v. Universal Auto Group, Inc.*, Case No. 23GDCV00191 filed in Los Angeles Superior Court (the “Action”).

The Action was filed against Defendant (“Defendant” or “Universal Auto Group, Inc.”) pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (“PAGA”). The Action was brought by former employees of Defendant on behalf of the State of California and all alleged “aggrieved employees,” defined as all current and former all service writers and service advisors employed by Defendant in California between November 22, 2021 and the date of approval of the settlement., employed You have been identified as one of the employees on whose behalf the case was brought.

The Plaintiffs in the Action claimed that Defendant owed civil penalties recoverable under PAGA for alleged violations of the California Labor Code including (1) failure to pay wages and overtime compensation; (2) failure to pay minimum wage; (3) rest break liability under Labor Code Sec. 226.7; (4) meal period liability under Labor Code Sec. 226.7; (5) failure to timely pay wages due at termination or resignation; (6) failure to provide wage statements compliant with Labor Code Sec. 226(a) or any other similar provision; (7) failure to pay sick leave at the correct rate pursuant to Labor Code sections 245.6 or 246; and (8) penalties pursuant to California’s Private Attorneys General Act (Labor Code Sec 2698, *et seq.*) arising out of the same. Defendant denies that it did anything wrong, that it violated the Labor Code or that it owes any civil penalties. The parties agreed to resolve the case. The Court has not ruled on the merits of the Action.

The Court has approved the settlement amount to be paid by Defendant for settlement of the PAGA claim for civil penalties. A portion of that settlement amount goes to the State of California’s Labor and Workforce Development Agency. Another portion of that amount goes to the alleged aggrieved employees. In agreeing to this settlement, Defendant does not admit to any wrongdoing or that it is liable in any way for any civil penalties under PAGA.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties. The amount is calculated based on the number of pay periods you worked as a non-exempt California employee for Defendant during the period from November 21, 2021 through the date of approval.

You are not a party to this lawsuit, but you and the State of California are bound by the settlement. If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter), **do not call or write the Court or Office of the Clerk of the Court to ask questions about the settlement.**

Very Truly Yours,

Phoenix Settlement Administrators