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Attorney for Plaintiff FRANCISCO GILLEY, individually, and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FRANCISCO GILLEY, individually and on behalf of all others similarly situated, Plaintiff, vs. PRO-A MOTORS, INC.; and DOES 1 through 20, inclusive, Defendants.	Case No. 25STCV21168 Assigned for all purposes to: Hon. Judge Samantha P. Jessner Dept. 7 **NOTICE OF MOTION AND MOTION FOR PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** Date: October 5, 2026 Time: 10:00 am Dept. 7 Action Filed: July 17, 2025 Trial Date: None Set

PLEASE TAKE NOTICE that on October 5, 2026, at 10:00 a.m., or as soon thereafter as the matter may be heard in Department 7 of the Los Angeles Superior Court, located at the Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, before the Honorable Samantha P. Jessner, Plaintiff Francisco Gilley ("Plaintiff") will, and hereby does, move this Court for an Order:

1. Granting preliminary approval of the proposed Class Action and Private Attorneys General Act ("PAGA") Settlement Agreement ("Settlement" or "Agreement") between Plaintiff and Defendant Pro-A Motors, Inc.;

2. Provisionally certifying the proposed Settlement Class for settlement purposes only;

3. Appointing Plaintiff Francisco Gilley as the Class Representative;

4. Appointing Steven A. McNicholl of the Law Office of Steven McNicholl as Class Counsel;

5. Approving the appointment of Phoenix Settlement Administrators as the Settlement Administrator;

6. Approving the form, content, and method of distribution of the proposed Notice of Class Action Settlement (the "Class Notice"); and

7. Scheduling a Final Approval Hearing and establishing related deadlines for Class Members to opt-out, object, or submit workweek challenges.

This Motion is made on the grounds that the Settlement is fair, adequate, and reasonable to the Settlement Class, falls well within the range of possible final approval, and meets all requirements for preliminary approval under California law and the rules of this Court.

This Motion is based on this Notice of Motion, the concurrently filed Memorandum of Points and Authorities, the Declaration of Steven A. McNicholl (and the exhibits attached thereto, including the fully executed Settlement Agreement), the Declaration of Plaintiff Francisco Gilley, the Declaration of Jodey Lawrence, the pleadings and records on file in this Action, and upon such oral and documentary evidence as may be presented to the Court at the time of the hearing.

Dated: June 19, 2026

LAW OFFICE OF STEVEN MCNICHOLL
By: Steven McNicholl
Steven McNicholl
Attorney for Plaintiff
Francisco Gilley

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MEMORANDUM OF POINTS AND AUTHORITIES

I. <u>MOVING PAPERS (Motion and Declarations)</u>

A. Introductory Information Summary of the litigation: On July 17, 2025, Plaintiff Francisco Gilley commenced this Action alleging wage and hour violations against his former employer, Defendant Pro-A Motors, Inc. ("Defendant" or "Pro-A"). McNicholl Decl., ¶ 8. On December 8, 2025, after complying with the administrative exhaustion requirements under Labor Code section 2699.3(a), Plaintiff filed a First Amended Complaint, the operative complaint in this Action. *Id*. The operative complaint asserts causes of action for failure to pay minimum and overtime wages, meal and rest break violations, failure to reimburse business expenses, inaccurate wage statements, waiting time penalties, violation of Business and Professions Code §§ 17200, *et seq*., and civil penalties under Lab. Code § 2698, *et seq.* (“PAGA”).

On March 10, 2026, the Parties participated in a full-day, arms-length mediation before the Honorable Judge Brian Walsh (Ret.). Judge Walsh is a highly respected mediator with extensive experience handling complex California wage and hour matters. The settlement was reached only after rigorous, adversarial negotiations facilitated by Judge Walsh. There was no collusion. McNicholl Decl., ¶ 11-12.

B. Reasonableness of Consideration (Dunk/Kullar Analysis)

Based on the statistically reliable 50% sample data, Class Counsel's expert calculated Defendant's corrected absolute maximum realistic exposure for all claims to be approximately $1,416,066.24. McNicholl Decl., ¶¶ 10, 14. Preliminary approval is warranted if the settlement falls within a "reasonable range." *North County Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.* (1994) 27 Cal. App. 4th 1085, 1089-90. The $337,500.00 Gross Settlement Amount represents a highly reasonable recovery and is entitled to a presumption of fairness (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1802) given the significant risks of achieving and maintaining class certification, the expense of continued litigation, and the strength of Defendant's defenses. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129. The valuation breakdown is as follows:

- **Unpaid Wages (Minimum Wage & Overtime):** The maximum value was estimated at $76,176.10. Plaintiff calculated the overtime rate at 3.54% and personally claimed five minutes of off-the-clock work occurred each workweek. However, Defendant argued off-the-clock work was strictly prohibited by policy and that the sample data showed no systemic support for off-the-clock work applying to other employees. Due to the difficulty of proving Defendant's knowledge of off-the-clock work on a class-wide basis, Plaintiff reasonably discounted this claim to approximately $19,044.02. McNicholl Decl., ¶ 15.
- **Meal and Rest Period Claims:** The maximum value was estimated at $461,137.50. Plaintiff initially possessed a strong argument under *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, arguing that Class Members' daily time-punch data evidenced missed, late, short, and interrupted breaks, thereby creating a presumption of violations. Conversely, Defendant maintained compliant written policies and argued that it provided time for breaks each shift. Because the time records revealed an inconsistent pattern—where some employees had a high violation rate and others had none—individualized inquiries would likely predominate regarding whether employees voluntarily skipped breaks (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004). Recognizing that competing declarations could easily defeat certification (*Rai v. CVS Caremark Corp.*, 2013 U.S. Dist. LEXIS 177730; *Lampe v. Queen of the Valley Medical Center* (2018) 19 Cal.App.5th 832), Plaintiff discounted these claims to $119,334.18. McNicholl Decl., ¶ 16.
- **Unreimbursed Business Expenses:** The maximum value was estimated at $54,040.00, assuming $5 per workweek for personal cell phone use. Defendant demonstrated it had no company policy requiring personal cell phones and that it provided walkie-talkies for on-the-clock communication. Lacking a source of

common proof to show who actually incurred expenses, Plaintiff valued this claim at $10,808.00. McNicholl Decl., ¶ 17.

- **Derivative Claims (Wage Statements & Waiting Time):** The Maximum value for wage statement penalties was $368,000.00 and waiting time penalties was $259,712.64. Plaintiff's counsel investigated and evaluated direct and derivative claims for failure to provide accurate itemized wage statements and waiting time penalties. Defendant argued that there were no facial violations on paystubs. While Plaintiff is confident that it can establish the existence of unpaid wages, Defendant could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties, and that there is a good faith dispute that any unpaid wages are due. Moreover, Plaintiff would have to overcome damaging precedent to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp*., 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc*., 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). Because these are derivative, they carry the same risks as the underlying wage claims. Furthermore, Defendant, possessed a strong "good faith dispute" defense against the "willfulness" requirement for waiting time penalties. Plaintiff discounted these claims to $178,313.80. McNicholl Decl., ¶ 18.

C. Fairness of Non-Class Claims (PAGA Allocation)

Plaintiff seeks approval of a $10,000.00 allocation to resolve the PAGA claims, which represents approximately 2.96% of the Gross Settlement Amount. Under *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77, this allocation is fair and reasonable to the affected Aggrieved Employees and the State.

Because this Action was filed on July 17, 2025, penalty calculations are strictly governed by recent PAGA reforms (AB 2288 and SB 92), which strictly limit maximum exposure to the

$100 initial violation rate and eliminate the "stacking" of derivative penalties. Based on 1,970 PAGA Pay Periods, the absolute maximum theoretical exposure is capped at $197,000.00.

Even this calculation remains highly theoretical. Informal discovery revealed that Defendant implemented compliant break practices prior to the commencement of the PAGA Period, resulting in a negligible violation rate during the actionable timeframe. A court assessing maximum penalties based on this negligible rate would almost certainly exercise its discretion to reduce the award as "unjust, arbitrary and oppressive, or confiscatory" under Labor Code section 2699(e)(2). An allocation that represents approximately 5% of the absolute maximum statutory exposure is firmly supported by case law such as *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, where courts routinely approve lower PAGA allocations when the underlying violations are minimal or subject to robust good-faith defenses. McNicholl Decl., ¶¶ 19-20.

D. Scope of the Release

To ensure the Settlement strictly complies with California law, the scope of the release for both Participating Class Members and Aggrieved Employees is defined with precision and clarity. Pursuant to *Amaro v. Anaheim Arena Mgmt.* (2021) 69 Cal.App.5th 521, 537, the released claims are strictly tied to the facts and allegations specifically pled in the Operative Complaint and Plaintiff's PAGA Notice during the applicable periods. Absent Class Members are not subjected to a general release or a Civil Code section 1542 waiver. McNicholl Decl., ¶ 12; McNicholl Decl., Ex. 1, §§ 5.2, 5.3.

E. Class Certification

- **Numerosity:** The Settlement Class consists of approximately 92 members, making joinder impracticable. There are no sub-classes. McNicholl Decl., ¶ 13; McNicholl Decl., Ex. 1, § 4.1.
- **Ascertainability:** The Class is readily ascertainable and identified from Defendant's payroll records. McNicholl Decl., ¶ 10. This satisfies the requirement that ascertainability is determined by examining the class definition, the size of the

class, and the means available for identifying class members. *Reyes v. Bd. of Supervisors* (1987) 196 Cal. App. 3d 1263, 1271.

- **Community of Interest:** Common questions predominate because Plaintiff alleges Defendant maintained uniform employment policies that illegally deprived Class Members of lawful wages, meal periods, and rest breaks, making the theories of recovery amenable to class treatment. *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 327; see also *Fireside Bank v. Superior Court* (2007) 40 Cal. 4th 1069, 1089. Plaintiff's claims are typical, as the legal theories and facts supporting his claims are substantially similar to other class members. *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46.
- **Adequacy of Class Counsel:** Class Counsel has extensive experience prosecuting wage and hour class actions and has been appointed as lead or co-counsel in numerous similar matters, including Dulce Zuazo v. Teddys Investments Inc. (LASC Case No. 22STCV00296, $395,000.00 settlement) and Jimmy Villeda v. Inservio3 LLC (LASC Case No. 22STCV09509, $200,000.00 settlement). Counsel also successfully resolved over 50 wage and hour class actions previously. (McNicholl Decl., ¶ 3-6.)
- **Adequacy of Class Representative:** Plaintiff Gilley has submitted a declaration evidencing his agreement to act as representative, confirming he understands his fiduciary responsibilities to the absent Class Members, and confirming no conflicts of interest. (Gilley Decl., ¶ 5-7.) Therefore, Plaintiff can adequately represent and protect the interests of other members of the class. *Capitol People First v. State Dep't of Developmental Servs.* (2007) 155 Cal. App. 4th 676, 696-697.

F. Claim Requirement This is not a "claims-made" settlement. There is no claim form requirement. Class Members will be mailed checks automatically based on the workweeks calculated from Defendant's records, ensuring relief is accessible without being burdensome.

G. Miscellaneous

- **Scope of Complaint:** The Settlement terms are within the scope of the operative complaint.
- **LWDA Notice:** Plaintiff has submitted a copy of the proposed Settlement Agreement to the LWDA. (McNicholl Decl., ¶ 29.)
- **Notice Language:** Notice will be provided in English and translated into Spanish to ensure full comprehension by the Class. McNicholl Decl., ¶ 12; McNicholl Decl., Ex. 1, § 1.8.
- **Affirmative Obligations / Injunctions:** There are no affirmative obligations imposed on absent class members, nor is there any injunctive relief.
- **Fee Splitting:** Class Counsel is acting as sole counsel in this matter. There are no fee-splitting agreements. (McNicholl Decl., ¶ 7.)
- **Class Representative Enhancement:** Plaintiff requests an enhancement of up to $10,000.00. A named plaintiff is eligible for payment that reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent class members. *Cellphone Termination Fee Cases* (2010) 186 Cal. App. 4th 1380, 1393; *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726. This is reasonable because Plaintiff Gilley's contributions went far beyond the standard expectations of a passive named plaintiff. He spent roughly 30 hours assisting Class Counsel, proactively authorized and provided his complete personnel file for the initial data baseline, educated Counsel on the company's internal operations to counter Defendant's written policy defenses, and attended an all-day mediation. Furthermore, Plaintiff is providing a broader General Release (including a Civil Code § 1542 waiver) that is not required of absent class members. Gilley Decl., ¶ 8-11; McNicholl Decl., ¶ 21-24.

II. SETTLEMENT AGREEMENT

A. The Basics

- **Class Definition:** All individuals who are or previously were employed by Defendant in California and classified as non-exempt employees from July 17, 2021 to March 10, 2026. (Estimated 92 members, 9,375 Workweeks). McNicholl Decl., Ex. 1, §§ 1.5, 1.11, 4.1.
- **PAGA Aggrieved Employees Definition:** Similarly defined, but for the PAGA Period from July 17, 2024 to March 10, 2026. (Estimated 73 employees, 1,970 PAGA Pay Periods). McNicholl Decl., Ex. 1, §§ 1.4, 1.22, 4.1.
- **Class and Release Period:** Extending the release period to March 10, 2026 (the date of mediation) is appropriate to fully and finally resolve the claims litigated up to the point the agreement in principle was reached.

B. Release of Claims

- **Scope:** Participating Class Members will release all claims that were alleged, or reasonably could have been alleged, based strictly on the facts in the Operative Complaint during the Class Period. McNicholl Decl., Ex. 1, § 5.2.
- **PAGA Release:** Aggrieved Employees will have a separate release for PAGA claims tied directly to the facts alleged in the Operative Complaint and Plaintiff's notice given to the LWDA. Aggrieved Employees will release PAGA claims and receive their PAGA allocation even if they request exclusion from the class settlement. McNicholl Decl., Ex. 1, § 5.3.
- **Civil Code Section 1542:** A general release and waiver of Civil Code section 1542 applies *only* to the named Plaintiff as part of his enhanced service award, not to the absent putative class members. McNicholl Decl., Ex. 1, § 5.1.1.
- **Release Effective Date:** The release becomes effective only *after* the Judgment becomes final and Defendant has fully funded the Gross Settlement Amount and all employer payroll taxes. McNicholl Decl., Ex. 1, § 5.

- **Class Data Confidentiality:** The Administrator maintains strict data security protocols to protect Class Member privacy and will use the data solely for settlement administration purposes, which does not impede Class Counsel's ability to discharge fiduciary duties. Lawrence Decl., ¶ 9-11; McNicholl Decl., Ex. 1, § 8.4.1.

C. Monetary Terms of Settlement

- **Settlement Amount:** Defendant will pay a non-reversionary Gross Settlement Amount ("GSA") of $337,500.00. McNicholl Decl., Ex. 1, §§ 3.1, 3.2.1–3.2.5.
- **Deductions:** The GSA is subject to the following deductions: up to $111,375.00 (33% of GSA) for attorneys' fees; up to $35,000.00 for litigation costs; up to $10,000.00 for the Class Representative Service Award; up to $6,250.00 for Administration Costs; and $10,000.00 for PAGA Penalties ($6,500 to the LWDA and $3,500 distributed to Aggrieved Employees).
- **Subclasses:** There are no subclasses.
- **Attorney Fees Calculation:** Fees are calculated using the percentage method (33%) and will be fully briefed and justified with a lodestar cross-check at the final approval stage in this common fund case. *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal. 5th 480, 503. This is highly appropriate, as empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery. *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11.
- **Taxes:** Defendant has agreed to separately and fully fund its share of employer payroll taxes owed on the Wage Portion so as not to dilute the GSA. McNicholl Decl., Ex. 1, § 3.1.
- **Reversion:** No portion of the GSA will revert to Defendant. *Id*.

- **Payment Formula:** The Net Settlement Amount (estimated $164,875.00) will be distributed pro rata to each Class Member based on their respective number of Workweeks. McNicholl Decl., Ex. 1, § 3.2.4.
- **Tax Allocation:** Individual Class Payments will be allocated 33.33% to wages (W-2), 33.33% to interest (1099), and 33.34% to statutory penalties (1099). McNicholl Decl., Ex. 1, § 3.2.4.1.
- **Injunctive Relief:** None.

D. Notice Administration

- **Administrator & Bid:** The Parties selected Phoenix Settlement Administrators. Phoenix's "not to exceed" bid of $6,250.00 is highly competitive and fair.
- **Qualifications:** Phoenix maintains robust data security procedures and carries adequate insurance coverage ($3,000,000 Cyber and $2,000,000 E&O) for data breaches or defalcation of funds. Lawrence Decl., ¶ 5-18; McNicholl Decl., Ex. 1, § 3.2.3.
- **Class List & NCOA:** The Administrator will receive the class list within 14 days of Preliminary Approval, and will update addresses using the National Change of Address (NCOA) Registry prior to mailing. McNicholl Decl., Ex. 1, §§ 8.4.1, 8.4.2.
- **Issuance Deadline:** Notice will be mailed within 14 days of the Administrator receiving the Class List.
- **Content:** The Notice complies with CRC 3.766(d), states the specific estimated payout and calculation formula for the class member, clearly separates PAGA payments, and accurately reflects the scope of the release.
- **Social Distancing:** The Notice accurately advises on Court appearances (LACourtConnect) and physical attendance.
- **Payment Processing:** Automatically processed via U.S. Mail; one consolidated check will be sent to those who qualify for both Class and PAGA payments.

- **Undeliverable & Re-mailed Notices:** Undeliverable notices will be skip-traced within 3 days. Class Members whose notices are re-mailed will receive an extended 14-day deadline to respond. McNicholl Decl., Ex. 1, §§ 8.4.3, 8.4.4.
- **Website / Hearing Changes:** The Notice instructs Class Members to check the settlement website (https://www.phoenixclassaction.com/) or the Court's website for date changes. The Final Judgment will be posted to the Administrator's website. McNicholl Decl., Ex. 1, § 8.8.

E. Responses to Notice

- **Deadlines:** Class Members have 45 days from initial mailing to submit written objections, requests for exclusion, or disputes to estimated workweeks. McNicholl Decl., Ex. 1, §§ 1.28, 8.5, 8.7.
- **Procedure:** The objection procedure is the same as the opt-out procedure (mailed to the Administrator, not filed with the Court). Class Members are not required to use specific language, nor are they restricted from speaking at the final approval hearing if they have not submitted a prior written objection.

F. Cy Pres Distribution

- **Check Validity:** Settlement checks will remain valid for 180 days. McNicholl Decl., Ex. 1, § 4.3.
- **Uncashed Checks (CCP § 384):** Funds from uncashed checks will be transmitted to the California Controller's Unclaimed Property Fund *in the name of the individual Class Member/Aggrieved Employee*. This directs the exact funds to the rightful employee, leaves no unpaid residue, and strictly complies with Code of Civil Procedure section 384. Accordingly, a *cy pres* recipient is not required or actively contemplated. *Id*.

G. Miscellaneous

- **Consistency:** The Settlement Agreement and Notice are consistent, have been carefully proofread, and are signed by all parties.

- **Dismissal:** The documents do not suggest that the end result of preliminary approval is dismissal; dismissal with prejudice will solely occur upon entry of a Final Judgment.
- **Escalator Clause:** If the actual number of Workweeks worked by Class Members during the Class Period exceeds the estimated 9,375 Workweeks by more than 10%, the GSA will increase proportionally. McNicholl Decl., Ex. 1, § 9.

III. EXHIBITS TO THE MOTION

- **LWDA Submission:** Proof of submission of the proposed Settlement Agreement to the LWDA is attached to the McNicholl Declaration as Exhibit 5.
- **Proposed Judgment:** A Proposed Judgment is not submitted at this time, as it will be submitted concurrently with the Final Approval Order pursuant to CRC 3.769(h).
- **Bookmarks:** All electronically filed exhibits are properly bookmarked in accordance with the Court's Electronic Filing guidelines.

IV. CONCLUSION

The proposed Settlement is fair, adequate, and reasonable, and it provides immediate, certain, and substantial benefits to the Settlement Class. Plaintiff respectfully requests that the Court grant Preliminary Approval of the Settlement, provisionally certify the Class, approve the form and method of Class Notice, and set a Final Approval Hearing.

Dated: June 19, 2026

LAW OFFICE OF STEVEN MCNICHOLL
By: Steven McNicholl
Steven McNicholl
Attorney for Plaintiff
Francisco Gilley