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Attorneys for Plaintiff,
Michael Guillen

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

Michael Guillen, on behalf of themselves and
on behalf of all persons similarly situated,

Plaintiff,

v.

Concord Automotive Sales and Service Inc.,
and DOES 1-25.

Defendants.

Case No: C23-01333

**DECLARATION OF HARRIS EMRAN
IN SUPPORT OF MOTION FOR
APPROVAL OF CALIFORNIA LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 ("PAGA")
SETTLEMENT**

I, Harris Emran, declare as follows:

1. I am an attorney at law duly licensed to practice law before all the courts in the State of California and the attorney of record herein for Plaintiff Michael Guillen. The information contained herein is based on my personal knowledge and/or belief. If called to testify to this information under oath, I could and would do so competently.

2. Plaintiff sought our Firm's assistance because he complained of wage and hour issues while working for Defendant Concord Automotive Sales and Service, Inc. (hereinafter "Defendant"). As discussed below, Plaintiff, with the help of our Firm, substantially investigated his potential claims and allegations and eventually made the decision to file a lawsuit for individual damages and PAGA

1 penalties. Plaintiff's chief wage and hour complaints were: (1) a typical workday was usually so
2 packed with tasks that it was not always possible for him or his coworkers to take sufficient breaks
3 without working past scheduled shifts; and (2) employees performed outside of scheduled shifts if
4 that work exceeded the "book time" but were not paid for such time worked. Plaintiff explained
5 that he experienced these issues about two or three times per month. The due diligence performed
6 before filing the lawsuit included an initial intake of Plaintiff, a case build-up process which
7 included a more in-depth intake of Plaintiff, and identifying individuals who could serve as potential
8 witnesses.

9 3. On March 23, 2023, Plaintiff provided the Labor Workforce and Development Agency
10 ("LWDA") written notice by online filing and Defendant via certified mailing of specific provisions
11 of Lab. Code §§ 2699 et seq. alleged to be violated including the facts and theories to support the
12 alleged violation. See Exhibit A.

13 4. I did not receive any notice from the LWDA of its intent to investigate the alleged violation
14 within 65 calendar days of the postmark date of the notice provided on March 22, 2023.

15 5. On June 1, 2023, Plaintiff filed his Complaint in this Court as Case No. C23-01333 alleging
16 nine causes of action for: (1) Unfair Competition, (2) Failure to Pay Minimum Wages, (3) Failure
17 to Reimburse Business Expenses, (4) Failure to Pay Wages When Due, (5) Failure to Provide
18 Accurate, Itemized Wage Statements, (6) Failure to Pay Overtime Compensation, (7) Failure to
19 Provide Required Meal Periods, (8) Failure to Provide Rest Periods, (9) Recovery of Civil Penalties
20 under the Labor Code Private Attorneys General Act. See Exhibit B.

21 6. Shortly after filing the complaint, the Parties met and conferred on certain alleged
22 deficiencies and eventually decided that informal resolution would be a desirable. Defendants out
23 and started discussing potential for informal resolution. Plaintiff contends that Defendant violated
24 the California Labor Code. Defendant denies that they have engaged in any unlawful activity, that
25 they have failed to comply with the law in any respect, and that they have any liability to anyone
26 based on the claims asserted in this action.

27 7. On July 19, 2023, the Parties entered into a Joint Stipulation to stay the case pending
28 settlement negotiations. See Exhibit C.

1 8. Between July 2023 and September 2023, the Parties to this action conducted a thorough
2 investigation into the claims and defenses of each party. This exchange included (1) information
3 bearing on the number of “aggrieved employees,” their respective job duties / responsibilities, pay
4 structure, job descriptions, and the number of pay periods during the PAGA period; (2) wage
5 statements for Guillen; (3) personnel file for Guillen; (4) the employee handbook and other wage
6 and hour related policies and procedures in effect during the relevant period; and (5) punch time
7 and pay data for Plaintiff.

8 9. I closely reviewed the documents and data provided by Defendants to determine the amount
9 of potential PAGA penalties, wages owed to Plaintiff, and other remedies potentially available to
10 Plaintiff and the aggrieved individuals based on the claims in the Action. In reviewing the data
11 provided by Defendants, I learned Defendants disciplined Plaintiff on multiple occasions for
12 violations alleged in his Complaint. I learned the violations alleged were not systematic or due to
13 Defendants practices/policies but more individualized and unique to Plaintiff and his position.

14 10. In my view, it is clear that Defendant’s written policies regarding meal and rest periods do
15 not explicitly violate the Labor Code; rather, the policies contained in Defendant’s operative
16 Employee Handbook are consistent with the law, for example, providing that employees are to take
17 uninterrupted, duty-free rest and meal breaks and directing employees to notify management if they
18 are in any way discouraged or impeded from taking their breaks. During meet and confers with
19 counsel for Defendant, I learned that it is Defendant’s contention that its managerial staff routinely
20 speaks directly to employees about their right to take adequate meal and rest periods and that the
21 physical nature of the work. Furthermore, Defendant has a written policy prohibiting “off-the-
22 clock” work and even disciplined Plaintiff in writing for violation of company policy. Presenting
23 risks for Plaintiff and the aggrieved employees recovery.

24 11. I observed Plaintiff expend considerable time and effort advocating on behalf of himself and
25 the alleged PAGA Aggrieved Employees; his role in achieving this potential settlement was
26 indispensable. He initially sought counsel in part because he was frustrated by the overtime
27 underpayment and the meal and rest period violations that he allegedly experienced. I explained to
28 him that a PAGA representative action was an option considering the nature of his claims. Plaintiff

1 chose to fight on behalf of the state and his co-workers because he felt Defendant's violations were
2 systemic. He hoped to achieve justice for more than just himself.

3 12. Plaintiff completed a detailed intake and follow-up intake process with our Firm. He
4 provided key factual details along with witness names and phone numbers. Plaintiff's work and
5 dedication bolstered our firm's own efforts.

6 13. After multiple exchanges and meetings, On September 1, 2023, the Parties reached an
7 agreement on a settlement offer in this action and started drafting the Settlement Agreement and
8 Release.

9 14. On October 24, 2023, the Parties fully executed the Settlement Agreement attached hereto
10 as Exhibit D.

11 15. By way of this settlement, Plaintiff seeks to fully and finally resolve alleged violations on
12 behalf of himself and all other Aggrieved Employees as defined in the Settlement Agreement. If
13 approved, the proposed Settlement will resolve this matter in its entirety.

14 16. Counsel in this action is of opinion that Settlement for the consideration and on the terms
15 set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of
16 Plaintiff and other Aggrieved Employees in light of all known facts and circumstances. This
17 includes consideration of the total number of alleged "aggrieved employees" is small, totaling only
18 10 employees during the PAGA period with 952 pay periods (approx. 95 pay periods per employee
19 or \$53.24 per pay period), the settlement was negotiated as part of an informed, non-collusive, arms-
20 length negotiation following several meetings with counsel and exchange of information, the
21 uniqueness of Plaintiff's injuries which may have undermined this claim, the ability for alleged
22 "aggrieved employees" to bring their own claims for non-PAGA claims, and Plaintiff's counsel risk
23 of obtaining full recovery of claimed PAGA penalties in light of Defendant's disclosures, and risk
24 of significant delay.

25 17. Assuming Plaintiff prevailed in demonstrating that Defendant failed to authorize or permit
26 Plaintiff and the Aggrieved Employees from taking their permitted meal and rest periods, CASS
27 faced a maximum penalty exposure of approximately \$95,200 assuming the Court imposed the
28 maximum initial violation amount of \$100 per pay period (\$100 x 952 pay periods). A \$50,686.75.

1 PAGA allocation represents approximately 53% of Defendant's exposure to penalties at the
2 maximum \$100/pay period initial violation amount.

3 18. The narrow scope of the release on behalf of the Aggrieved Employees also confirms the
4 reasonableness of this settlement. As set forth in the settlement agreement at §§2.28, the Aggrieved
5 Employees are only releasing standing to bring a representative action against Defendant for PAGA
6 penalties on the claims alleged in the Complaint and can still pursue individual claims.

7 19. At the same time of submission to the Court, my office submitted a redacted copy of the
8 Settlement Agreement and Motion for Approval to the LWDA website in accordance with Lab.
9 Code § 2699(I)(2).

10 20. Furthermore, we have incurred \$563.25 in litigation costs. All costs were directly incurred
11 in the prosecution of this action. An itemized cost sheet is attached as Exhibit E. The matter was
12 undertaken by our Firm purely as a contingency fee case. In other words, our Firm will not receive
13 any compensation unless there is a cash recovery.

14 21. I have been practicing law in California since 2019. I founded Emran Law Firm in 2020 and
15 have focused in the areas of business and labor employment law. Our law firm is headquartered
16 with an office in San Francisco. Our firm represents employees across the state of California. My
17 hourly rate is \$550. I supervised other members of Emran Law who also worked on this case:

- 18 a. Kaitlin Martinez is an attorney licensed by the State of California (SBN 348006). She
19 has been a member of Emran Law since January 2023 focusing on employment law and
20 wage/hour issues. Her hourly rate is \$400.

21 22. Our Firm's attorneys and their supporting staff must be extremely familiar and
22 knowledgeable with wage and hour laws, litigation practices, case law, policy, statutory
23 construction, employer practices, employee needs, employee working conditions, and more. With
24 our learned knowledge, we must strategize which cases to settle pre-litigation or post-litigation,
25 which to mediate, and which cases to take to trial. Our staff members, or non-attorney staff, are
26 trained and individually supervised by either me or another attorney. The experience in this type of
27 litigation serves our firm well because it gives context and historical knowledge as to relevant
28 common practices and recordkeeping.

23. The cases we handle are primarily taken on a contingency basis. All of our cases are filed in the Superior Courts because there we can obtain broader remedies for our clients. For example, the Labor Commissioner does not award damages for wage statement violations, nor does it award attorney fees, or allow recoveries for a full four-year statute of limitations. This case, like all of our wage and hour class action cases, undertaken on pure contingency. Plaintiffs are not asked or required to pay Emran Law any money unless there is a recovery on their behalf.

24. On the contrary, our Firm strongly believes in the vigorous prosecution of our cases, including this case, for the best interest of our clients, and any relevant classes or subclasses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my personal knowledge.

Date: November 2, 2023

Harris Emran

Harris Emran, Esq.
Attorney for Plaintiff and Aggrieved
Employees

EXHIBIT A

Emran Law Firm

415 Mission St, 37th Floor
San Francisco, CA 94105

March 23, 2023

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

Concord Automotive Sales and Service Inc.

c/o Monica Dosanjh
4200 John Monego Ct
Dublin, CA 94568

Sent via Certified Mail and Return Receipt

- **Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

To Whom It May Concern:

Our offices represent Plaintiff Michael Guillen (“Mr. Guillen”) and other aggrieved employees in a proposed lawsuit against Defendants Concord Automotive Sales and Service Inc. and Does 1-25 (collectively “Defendants”). Defendants employed Plaintiff in Concord, California from July 2020 through January 11, 2023, as a non-exempt employee, paid an hourly rate, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all time worked, minimum wages due, and for all meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.



As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to them, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt, exempt, hourly employees who worked for Defendants in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as



alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,

EMRAN LAW FIRM

A handwritten signature in black ink that reads "Harris Emran". The script is fluid and cursive, with the first name "Harris" and last name "Emran" clearly distinguishable.

Harris Emran, Esq.

Enclosure (1)



EXHIBIT B

Harris Emran (SBN 329674)
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Per local Rule This case is assigned to
Judge Fannin III for all purposes.

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

SUMMONS ISSUED

Michael Guillen, on behalf of themselves and
on behalf of all persons similarly situated,

Plaintiff,

v.

Concord Automotive Sales and Service Inc.
and DOES 1-25.

Defendants.

Case No: C23-01333

**COMPLAINT FOR DAMAGES AND
RECOVERY OF PENALTIES UNDER
PRIVATE ATTORNEY GENERAL ACT**

DEMAND FOR A JURY TRIAL

Plaintiff MICHAEL GUILLEN (“PLAINTIFF”), in his representative capacity on behalf of himself, the State of California, and fellow current and former AGGRIEVED EMPLOYEES, defined below, against Defendants Concord Automotive Sales and Service Inc. (“Defendant Concord”), and DOES 1-25 (“Defendant DOES”) (collectively “DEFENDANTS”), alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

I. INTRODUCTION

1. Plaintiff brings this representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former AGGRIEVED EMPLOYEES of DEFENDANTS for engaging in a pattern and practice of wage and hour violations under the California Labor Code.

2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS decreased their employment-related costs by systematically violating California wage and hour laws.

3. DEFENDANTS' systematic pattern of wage and hour and IWC Wage Order violations toward PLAINTIFF and other AGGRIEVED EMPLOYEES in California include, *inter alia*:

- a. Failure to provide meal periods;
- b. Failure to provide rest periods;
- c. Failure to pay all regular and overtime wages;
- d. Failure to provide accurate payroll records;
- e. Failure to reimburse for required business expenses;
- f. Failure to provide accurate itemized wage statements;
- g. Failure to timely pay wages due during, and upon termination of, employment.

4. PLAINTIFF brings this representative action against DEFENDANTS on behalf of himself and all other AGGRIEVED EMPLOYEES of DEFENDANT in California, seeking all civil penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

5. PLAINTIFF reserves the right to name additional representatives throughout the State of California

II. PARTIES

6. Plaintiff MICHAEL GUILLEN (“PLAINTIFF GUILLEN”), an individual, has resided, and at all times mentioned in this Complaint, continues to reside in Contra Costa County.

7. Defendant CONCORD AUTOMOTIVE SALES AND SERVICE INC., incorporated as Concord Automotive Sales and Service, Inc. (“DEFENDANT CONCORD”) is a California corporation registered with the Secretary of State as Entity No. 4534235, that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

1 8. Defendants DOES 1-25 (“Defendant DOES”) are persons and/or entities that at all
2 relevant times mentioned herein conducted and continue to conduct substantial and regular
3 business throughout California.

4 9. DEFENDANTS own, operate, and/or manage a car dealership that additionally
5 performs automotive services in Concord, California, in the County of Contra Costa.

6 10. DEFENDANTS employed PLAINTIFF GUILLEN from July 2020 through
7 January 2023 at DEFENDANT Concord, located at 1340 Concord Avenue in Concord,
8 California.

9 11. At all times, DEFENDANTS paid PLAINTIFF on an hourly basis.

10 12. PLAINTIFF brings this action in his representative capacity on behalf of the State
11 of California and on behalf of all individuals who are or previously were employed by
12 DEFENDANT CONCORD in California who suffered one or more Labor Code violations
13 enumerated in Labor Code §§ 2698 *et seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who
14 worked for DEFENDANT between March 23, 2022, and the present (“PAGA PERIOD”).

15 13. PLAINTIFF GUILLEN is an “AGGRIEVED EMPLOYEE” within the meaning
16 of Labor Code § 2699(c) because he was employed by DEFENDANTS and suffered one or more
17 of the alleged Labor Code violations committed by DEFENDANTS.

18 14. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant
19 times were, employees of DEFENDANTS, within the meanings set forth in the California Labor
20 Code and the applicable Industrial Welfare Commission Wage Order.

21 15. Each of the fictitiously named defendants participated in the acts alleged in this
22 Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 25,
23 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting
24 forth the true names and capacities of these fictitiously named defendants when their true names
25 are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the
26 fictitious defendants has participated in the acts alleged in this Complaint.

27 16. DEFENDANTS, including DOES 1 THROUGH 25 (hereinafter collectively
28 “DEFENDANTS”), were PLAINTIFF’S employers or persons acting on behalf of PLAINTIFF’S

1 employer, within the meaning of California Labor Code § 558, who violated or caused to be
2 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
3 hours and days of work in any order of the Industrial Welfare Commission and, as such, are
4 subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all
5 relevant times.

6 17. DEFENDANTS were PLAINTIFF’S employer or persons acting on behalf of
7 PLAINTIFF’S employer either individually or as an officer, agent, or employee of another person,
8 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
9 employee a wage less than the minimum fixed by California state law, and as such, are subject to
10 civil penalties for each underpaid employee.

11 III. JOINT EMPLOYER

12 18. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to
13 enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code*
14 § 2699(a).)

15 19. Section 558 of the California Labor Code provides that “any employer *or other*
16 *person* acting on behalf of an employer who violates, or causes to be violated, a section of this
17 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
18 Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).)

19 20. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person*
20 acting either individually or as an officer, agent, or employee of another person, who pays or
21 causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
22 local law, or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* §
23 1197.1(a).)

24 21. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have
25 held that a corporate employer’s owners, officers and directors, are subject to civil penalties for
26 the employer’s failure to pay appropriate wages to its employees, and, since liability under either
27 558 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings
28 are necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez*

1 v. *Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203
2 Cal.App.4th 1112, 1145-1146.

3 22. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS,
4 and each of them, are subject to civil penalties for their failure to pay PLAINTIFF and the
5 AGGRIEVED EMPLOYEES the appropriate wages as complained of herein and proximately
6 caused the complaints, injuries, and damages alleged herein.

7 23. At all relevant times, each DEFENDANT, whether named or fictitious, was the
8 agent, employee or other person acting on behalf of each other Defendant, and, in participating in
9 the acts alleged in this Complaint, acted within the scope of such agency or employment and
10 ratified the acts of the other.

11 24. Each DEFENDANT, whether named or fictitious, exercised control over
12 PLAINTIFF'S wages, working hours, and/or working conditions.

13 25. Each DEFENDANT, whether named or fictitious, acted in all respects pertinent to
14 this action as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or
15 policy, and the acts of each DEFENDANT is legally attributable to the other DEFENDANTS.

16 IV. JURISDICTION AND VENUE

17 26. This Court has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure, Section 410.01.

19 27. Venue is proper in this Court pursuant to California Code of Civil Procedure,
20 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
21 DEFENDANTS (i) currently maintains and at all relevant times-maintained offices and facilities
22 in this County, and (ii) committed the wrongful conduct herein alleged in this County against
23 PLAINTIFF and the AGGRIEVED EMPLOYEES.

24 V. FACTUAL ALLEGATIONS

25 A. Rest Period Violations

26 28. From time-to-time and during the PAGA Period, PLAINTIFF and other
27 AGGRIEVED EMPLOYEES were required to work in excess of four (4) hours without being
28 provided ten (10) minute rest periods as a result of DEFENDANTS' policies and practices.
PLAINTIFF and other AGGRIEVED EMOPLOYEES from time-to-time were required to work in

1 excess of eight (8) hours or more, without being provided a second ten (10) minute rest period.
2 When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES
3 were, from time to time, required to remain on duty and/or on call. PLAINTIFF and other
4 AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu* thereof. As a
5 result of DEFENDANTS' policies and DEFENDANTS' policies and practices, PLAINTIFF and
6 other AGGRIEVED EMPLOYEES were denied their proper rest periods by DEFENDANTS and
7 DEFENDANTS' managers.

8 B. Meal Period Violations

9 29. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
10 work during the meal break during what was supposed to be PLAINTIFF'S off-duty meal break
11 due to DEFENDANTS' work requirements and their policies and practices.

12 30. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
13 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning
14 the time during which an employee is subject to the control of an employer, including all the time
15 the employee is suffered or permitted to work. During the entirety of PLAINTIFF and other
16 AGGRIEVED EMPLOYEES' employment and the PAGA PERIOD, DEFENDANTS required
17 PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they
18 were under DEFENDANT'S control. Specifically, as a result of PLAINTIFF'S demanding work
19 requirements and Defendant's practices, DEFENDANTS required PLAINTIFF and other
20 AGGRIEVED EMPLOYEES to work during the meal break during what was supposed to be an
21 off-duty meal break. PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time,
22 interrupted by work assignments while clocked out for what should have been PLAINTIFF and
23 other AGGRIEVED EMPLOYEE'S off-duty meal break. As a result, PLAINTIFF and other
24 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime wage by regularly working
25 without their time being accurately recorded and without compensation at the applicable wage and
26 overtime rates. DEFENDANTS had, and may continue to practice, a uniform policy to not pay
27 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked.

28 31. During the PAGA PERIOD, as a result of work requirements and DEFENDANTS'

1 practices, from time to time, PLAINTIFF and other AGGRIEVED EMPLOYEES were unable to
2 take thirty (30) minute off-duty meal breaks and were not fully relieved of duty for their meal period.
3 PLAINTIFF and other AGGRIEVED EMPLOYEES were required to perform work as ordered by
4 DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break.
5 Further, DEFENDANTS failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES
6 with a second off-duty meal period for some workdays in which these employees were required by
7 DEFENDANTS to work ten (10) hours of work from time to time. The nature of the work performed
8 by PLAINTIFF and other AGGRIEVED EMPLOYEES does not qualify for limited and narrowly
9 construed “on-duty” meal period exception. PLAINTIFF and other AGGRIEVED EMPLOYEES
10 therefore forfeited meal breaks without additional compensation and in accordance with
11 DEFENDANTS’ policies and practices.

12 C. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations

13 32. During the PAGA PERIOD, from time to time, DEFENDANTS failed to accurately
14 pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours worked.

15 33. Specifically, DEFENDANTS required PLAINTIFF and other AGGRIEVED
16 EMPLOYEES to work in excess of their scheduled shifts and failed to record, track, and accurately
17 pay PLAINTIFF and other AGGRIVEED EMPLOYEES wages for all hours worked.

18 34. Additionally, DEFENDANTS did not provide PLAINTIFF and AGGRIEVED
19 EMPLOYEES meal breaks and/or rest breaks and required PLAINTIFF and AGGRIEVED
20 EMPLOYEES to perform off-the-clock work. DEFENDANTS failed to pay PLAINTIFF and other
21 AGGRIEVED EMPLOYEES necessary wages for attending and performing work at
22 DEFENDANTS’ direction, request and benefit, while off-the clock.

23 35. DEFENDANTS directed and directly benefited from the uncompensated off-the-
24 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

25 36. DEFENDANTS controlled the work schedules, duties, protocols, applications,
26 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED
27 EMPLOYEES.

28 37. DEFENDANTS were able to track the amount of time PLAINTIFF and the other

1 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track,
2 or pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for all
3 the work they performed, including during off-the-clock work.

4 38. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt
5 employees, subject to the requirements of the California Labor Code.

6 39. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
7 AGGRIEVED EMPLOYEES of all minimum, overtime, and double time wages owed for the off-
8 the-clock work activities.

9 40. Because PLAINTIFF and other AGGRIEVED EMPLOYEES typically worked at
10 least 40 hours in a workweek, and occasionally more than eight (8) hours per day, DEFENDANTS'
11 practices also deprived employees of overtime pay.

12 41. DEFENDANTS knew or should have known that PLAINTIFF and the other
13 AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

14 42. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages
15 due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent
16 while off-the-clock. DEFENDANTS have a uniform practice to not pay PLAINTIFF and the
17 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law.

18 43. For instance, PLAINTIFF and other AGGRIEVED EMPLOYEES are regularly
19 required to stay in excess of their scheduled shift to run diagnostics, complete vehicle inspections,
20 perform break work, and other various job duties to ensure vehicles are returned to their owners on
21 schedule. However, DEFENDANTS refused and may continue to do so, to compensate PLAINTIFF
22 and other AGGRIEVED EMPLOYEES for any time worked beyond the scheduled shift.

23 44. Additionally, PLAINTIFF and other AGGRIEVED EMPLOYEES were unable to
24 take off-duty meal and rest breaks and were not fully relieved of duty for rest and meal periods.
25 PLAINTIFF and other AGGRIEVED EMPLOYEES were required to perform work as ordered by
26 DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal
27 break.

28 45. DEFENDANTS only compensated PLAINTIFF and other AGGRIEVED

1 EMPLOYEES for the time recorded on timesheets. DEFENDANTS failed to pay PLAINTIFF and
2 other AGGRIEVED EMPLOYEES for any hours worked in excess of scheduled shifts and did not
3 track or compensate employees for any time worked in excess of scheduled shifts. DEFENDANTS'
4 policy caused PLAINTIFF and other AGGRIEVED EMPLOYEES to forfeit minimum wages,
5 overtime pay, off-duty meal and rest breaks without additional compensation.

6 46. Moreover, DEFENDANTS also provided PLAINTIFF and other AGGRIEVED
7 EMPLOYEES with a paystub that failed to comply with Cal. Lab. Code § 226.

8 47. Further, and as detailed below, DEFENDANTS also failed to reimburse PLAINTIFF
9 and other AGGRIEVED EMPLOYEES for required business expenses related to the use of their
10 personal vehicle and cell phone on behalf of and in furtherance of their employment with
11 DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF the regular wages,
12 overtime compensation still owed to him or any penalty wages owed to them under Cal. Lab. Code
13 § 203

14 D. Unreimbursed Business Expenses

15 48. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
16 use their personal cell phone to perform work duties. For instance, DEFENDANTS required
17 PLAINTIFF and other AGGRIEVED EMPLOYEES to use his personal cell phone to fix his
18 timesheet on Paycom, receive work assignments, provide and/or receive updates to and from
19 Managers, and to research diagnostic issues for vehicles.

20 49. DEFENDANTS additionally required PLAINTIFF and other AGGRIEVED
21 EMPLOYEES to attend mandatory off-site trainings in various locations throughout the San
22 Francisco Bay Area. Specifically, DEFENDANTS required PLAINTIFF to attend mandatory off-
23 site training on at least three (3) occasions in various locations including Stockton and the French
24 Camp area in San Joaquin County. PLAINTIFF and AGGRIEVED EMPLOYEES used personal
25 vehicles for transportation to and from these mandatory events and were not provided any
26 reimbursement.

27 50. DEFENDANTS did not reimburse PLAINTIFF and other AGGRIEVED
28 EMPLOYEES for use of a personal vehicle to discharge work duties, nor did they provide

1 PLAINTIFF or other AGGRIEVED EMPLOYEES with transportation to mandatory off-site
2 trainings.

3 51. Instead, DEFENDANTS directed PLAINTIFF and other AGGRIEVED
4 EMPLOYEES to use personal cell phones and personal vehicles to discharge work duties.

5 52. DEFENDANTS never reimbursed PLAINTIFF and other AGGRIEVED
6 EMPLOYEES for personal cell phone use or use of personal vehicles to perform work duties.
7 PLAINTIFF and other AGGRIEVED EMPLOYEES were neither compensated for the cost of the
8 cell phone nor the cost of the cell phone plan. DEFENDANTS additionally never compensated
9 PLAINTIFF and other AGGRIEVED PLAINTIFFS for gas or mileage for use of a personal vehicle
10 for work duties.

11 E. Failure to Pay Double Overtime

12 53. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
13 use personal tools and equipment necessary to perform work duties customarily required by the
14 trade. For instance, DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES
15 to provide and use personal tools to perform services on vehicles at DEFENDANTS' location, such
16 as perform oil changes, break work, HVAC work, and other repairs.

17 54. The Industrial Welfare Commission Order No. 4-2001 requires an employer to
18 provide wages that are at least two (2) times the minimum wage to employees that provide their
19 own tools or equipment when necessary to perform a job.

20 55. Because PLAINTIFF and other AGGRIEVED EMPLOYEES were required to bring
21 tools and equipment necessary to perform their job duties, PLAINTIFF and other AGGRIEVED
22 EMPLOYEES were entitled to wages at least two (2) times the minimum wage.

23 56. DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
24 wages that are at least two (2) times the minimum wage beginning in January 2023. DEFENDANTS
25 never compensated PLAINTIFF and other AGGRIEVED EMPLOYEES accurate wages for use of
26 personal equipment and tools required by the DEFENDANTS for the month of January 2023.

27 F. Inaccurate Itemized Wage Statements

28 57. California Labor Code Section 226 requires an employer to furnish its employees an

1 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3)
2 the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
3 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
4 employee and only the last four digits of the employee's social security number or an employee
5 identification number other than a social security number, (8) the name and address of the legal
6 entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
7 corresponding number of hours worked at each hourly rate by the employee

8 58. From time to time and during the PAGA PERIOD, when PLAINTIFF and other
9 AGGRIEVED EMPLOYEES missed meal and rest breaks, worked off-the-clock, worked overtime,
10 were not paid missed meal and rest period premiums, or were not paid for all hours worked,
11 DEFENDANTS also failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with
12 complete and accurate wage statements which failed to show, among other things, the total hours
13 worked and all applicable hourly rates in effect during the pay period and the corresponding amount
14 of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and
15 rest periods, overtime pay.

16 59. For instance, PLAINTIFF and other AGGRIEVED EMPLOYEES routinely
17 performed off-the-clock work and missed both rest and meal periods. The compensation received
18 did not include meal or rest time premiums, nor did it include overtime wages so it did not accurately
19 compensate for time worked. DEFENDANT violated California Labor Codes section 226 by failing
20 to list this remuneration, or the applicable hourly rate and the corresponding number of hours
21 worked at the applicable hourly rate for this remuneration. PLAINTIFF and other AGGRIEVED
22 EMPLOYEES suffered damage as a result of DEFENDANTS' aforementioned violation because
23 they could not promptly and easily determine from the wage statement alone the applicable hourly
24 rate and the corresponding number of hours worked at the applicable hourly rate for this
25 remuneration.

26 60. DEFENDANTS routinely failed to keep, maintain and store accurate payroll
27 records. In addition to the violations described above, DEFENDANTS, from time to time, failed
28 to provide PLAINTIFF and AGGRIEVED EMPLOYEES with wage statements that comply with

1 Cal. Lab. Code § 226. Specifically, DEFENDANTS failed to include the correct total number of
2 hours worked on the wage statements.

3 61. As a result, DEFENDANTS issued PLAINTIFF and the other AGGRIEVED
4 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
5 violations are knowing and intentional, and were not isolated or due to an unintentional payroll error
6 due to clerical or inadvertent mistake.

7
8 **VI. CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 For Unfair Competition

(Cal. Bus. & Prof. Code §§ 17200 et seq.)

(Against All DEFENDANTS)

11 62. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
12 and every allegation set forth above.

13 63. PLAINTIFF seeks to enforce important rights affecting the public interest within the
14 meaning of Code of Civil Procedure section 1021.5.

15 64. California's public policy is to protect employees by mandating that employees
16 provide itemized wage statements accurately reporting total hours works, wages earned, and all
17 deductions made from wages earned by such employee.

18 65. DEFENDANTS' failure to provide accurate and itemized wage statements has been
19 and continues to be, unfair, unlawful, and harmful to PLAINTIFF and the general public.

20 66. A violation of California Business & Professions Code sections 17200 et seq. may
21 be predicated on the violation of any state or federal law. Defendants' violations, as alleged herein,
22 including Cal. Lab. Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 515, 1174, and 2802, are
23 violations of California law, and constitute unlawful business acts and practices in violation of
24 California Business & Professions Code sections 17200 et seq.

25 67. PLAINTIFF is a wage worker dependent on DEFENDANTS for their livelihood and
26 does not have the same bargaining advantage as their employer.

27 68. DEFENDANTS controlled the activities of all employee labor, including
28 PLAINTIFF. DEFENDANTS thereby saved on employment costs by paying less than all wages

1 owed to PLAINTIFF.

2 69. Throughout the time relevant to this action, DEFENDANTS failed and/or refused to
3 abide by these long-standing employee protections, including the guarantees of proper meal or rest
4 periods or an additional hour of pay.

5 70. Under its unlawful scheme, DEFENDANTS evaded its other legal responsibilities
6 as an employer and instead systematically saved on costs at the expense of PLAINTIFF.

7 71. With this unlawful scheme, DEFENDANTS unjustly appropriated for itself
8 significant amounts of money that it otherwise should have paid to employees as wages.

9 72. DEFENDANTS reduced wages due, in violation of Labor Code section 226.7.

10 73. DEFENDANTS' unfair business practices have reaped undue benefits and illegal
11 profits, and unjustly enriched DEFENDANTS, at the expense of PLAINTIFF.

12 74. PLAINTIFF have been personally injured by DEFENDANTS' unlawful business
13 practices, including the loss of money.

14 75. Pursuant to California Business & Professions Code sections 17200 et seq.,
15 PLAINTIFF is also entitled to disgorgement of illegally acquired profits by DEFENDANTS during
16 the period of employment. PLAINTIFF is also entitled to an award of attorneys' fees and costs
17 under the common fund doctrine, California Code of Civil Procedure section 1021.5, and other
18 applicable laws.

19 **SECOND CAUSE OF ACTION**
20 For Failure to Pay Minimum Wages
(Cal. Lab. Code § 1194, 1197& 1197.1)
21 (Against All DEFENDANTS)

22 76. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
23 and every allegation set forth above.

24 77. PLAINTIFF and other AGGRIEVED EMPLOYEES bring a claim for
25 DEFENDANTS' willful and intentional violations of California Labor Code and the Industrial
26 Welfare Commission requirements for DEFENDANTS' failure to accurately calculate and pay
27 minimum wages to PLAINTIFF and AGGRIEVED EMPLOYEES.

28 78. Pursuant to Cal. Lab. Code §204, other applicable laws and regulations, and public
policy, an employer must timely pay its employees for all hours worked.

1 79. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
2 including minimum wage compensation and interest thereon, together with the costs of suit.

3 80. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
4 the other AGGRIEVED EMPLOYEES without regard to the correct amount of time they worked.
5 As set forth herein, DEFENDANTS' uniform practice was to unlawfully and intentionally deny
6 timely payment of wages due to PLAINTIFF and the other AGGRIEVED EMPLOYEES.

7 81. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
8 without limitation, applicable to AGGRIEVED EMPLOYEES as a whole, as a result of
9 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
10 and the other AGGRIEVED EMPLOYEES in regard to listing the correct hours worked and
11 compensation for missed meal and rest periods.

12 82. In committing these violations of the California Labor Code, DEFENDANTS
13 inaccurately calculated the amount of time worked and consequently underpaid the actual time
14 worked by PLAINTIFF and other AGGRIEVED EMPLOYEES. DEFENDANTS acted in an
15 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
16 California Labor Code, the Industrial Welfare Commission requirements and other applicable
17 laws and regulations.

18 83. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
19 PLAINTIFF and the other AGGRIEVED EMPLOYEES did not receive the correct wage
20 compensation for their time worked for DEFENDANTS.

21 84. During the PAGA PERIOD, PLAINTIFF and the other AGGRIEVED
22 EMPLOYEES were paid less for time worked than they were entitled to, constituting a failure to
23 pay all earned wages.

24 85. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
25 compensation to PLAINTIFF and the other AGGRIEVED EMPLOYEES for the true time they
26 worked, PLAINTIFF and the other AGGRIEVED EMPLOYEES have suffered and will continue
27 to suffer an economic injury in amounts which are presently unknown to them, and which will be
28 ascertained according to proof at trial.

1 86. DEFENDANTS knew or should have known that PLAINTIFF and the other
2 AGGRIEVED EMPLOYEES are under-compensated for their time worked. DEFENDANTS
3 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
4 employees for their labor as a matter of uniform corporate policy, practice and procedure, and
5 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
6 AGGRIEVED EMPLOYEES the correct wages for their time worked.

7 87. In performing the acts and practices herein alleged in violation of California labor
8 laws, and refusing to compensate the members of the AGGRIEVED EMPLOYEES for all time
9 worked and provide them with the requisite compensation, DEFENDANTS acted and continue to
10 act intentionally, oppressively, and maliciously toward PLAINTIFF and the other AGGRIEVED
11 EMPLOYEES with a conscious and utter disregard for their legal rights, or the consequences to
12 them, and with the despicable intent of depriving them of their property and legal rights, and
13 otherwise causing them injury in order to increase company profits at the expense of these
14 employees.

15 88. PLAINTIFF and the other AGGRIEVED EMPLOYEES, therefore, request
16 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
17 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
18 California Labor Code and/or other applicable statutes. To the extent minimum wage
19 compensation is determined to be owed to the PLAINTIFF and other AGGRIEVED
20 EMPLOYEES who have terminated their employment, DEFENDANTS' conduct also violates
21 Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
22 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of the
23 PLAINTIFF and other AGGRIEVED EMPLOYEES. DEFENDANTS' conduct as alleged herein
24 was willful, intentional and not in good faith. Further, PLAINTIFF and other AGGRIEVED
25 EMPLOYEES are entitled to seek and recover statutory costs.

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THIRD CAUSE OF ACTION

For Failure to Reimburse Business Expenses
(Cal. Lab. Code § 2802)
(Against All DEFENDANTS)

89. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

90. Pursuant to California Labor Code section 2802, DEFENDANTS are required to indemnify PLAINTIFF and other AGGRIEVED EMPLOYEES for the expenses and losses incurred during the performance of their job duties. The purpose of this statute is to prevent employers from passing their operating expenses on to their employees.

91. In violation of Labor Code section 2802, DEFENDANTS failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for necessary business expenditures for personal cell phone and use of personal vehicle(s) to attend mandatory trainings.

92. DEFENDANTS sought to pad their own pockets at the expense of their employees, and instead of compensating their employees for the necessary business costs, the employer passed on its costs to its employees.

93. DEFENDANTS intentionally failed to reimburse its employees for the actual expenses incurred and thereby increased its own profits to the detriment of its employees.

94. PLAINTIFF seeks to recover these business expenditures, plus interest thereon, reasonable attorneys' fees, and costs, in an amount to be proven at trial.

95. Interest accrues from the date the employee incurred the necessary expenditure or loss.

FOURTH CAUSE OF ACTION

For Failure to Pay Wages When Due
Cal. Lab. Code §§ 201, 202, 203, and 204
(Against All DEFENDANTS)

96. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

97. If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, . . . 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or

1 until an action therefor is commenced; but the wages shall not continue for more than 30 days.
2 (Cal. Lab. Code § 203).

3 98. To date, DEFENDANTS, have yet to pay PLAINTIFF all of the wages and all
4 premiums due to them for off-the-clock work, missed meal breaks and missed rest breaks and
5 DEFENDANTS have failed to pay any penalty wages owed to them under California Labor Code
6 section 203. As a result of DEFENDANTS' failure to pay PLAINTIFF for all hours worked, pay
7 meal premiums at the correct rate, and separately compensate PLAINTIFF for his breaks,
8 DEFENDANTS also failed to pay all wages to PLAINTIFF at the time of termination, thereby
9 violating California Labor Code section 203.

10 99. Additionally, the employment of PLAINTIFF and other AGGRIEVED
11 EMPLOYEES terminated, and DEFENDANTS have not tendered payment of wages to these
12 employees who were underpaid for minimum wage and/or overtime wage, and/or missed meal
13 and rest breaks, as required by law.

14 100. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and other
15 AGGRIEVED EMPLOYEES whose employment has terminated, PLAINTIFF demands up to
16 thirty (30) days of pay as penalty for not paying all wages due at time of termination for all
17 employees who terminated employment during the PAGA PERIOD and demand an accounting
18 and payment of all wages due, plus interest and statutory costs as allowed by law.

19 101. Further, every person who fails to pay the wages of each employee as provided in
20 Sections 204 is liable for \$100.00 for the initial violations, \$200 for each subsequent failure to pay
21 an employee, plus 25% of the amount unlawfully withheld.

22 102. PLAINTIFF seeks to recover the statutory penalties provided by Labor Code
23 sections 203, 204, and 210 for the reimbursement violations committed by DEFENDANTS.

24 **FIFTH CAUSE OF ACTION**

25 For Failure to Provide Accurate, Itemized Wage Statements
26 (Cal. Lab. Code § 226)
(Against All DEFENDANTS)

27 103. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
28 and every allegation set forth above.

104. Section 226(a) of the California Labor Code requires employers to provide itemized

1 wage statements accurately reporting total hours worked, wages earned, and all deductions made
2 from wages earned by such employees.

3 105. DEFENDANTS did not accurately record PLAINTIFF and other AGGRIEVED
4 EMPLOYEES' wages, off-the-clock work, and missed meal and rest breaks. DEFENDANTS failed
5 to provide an accurate wage statement in writing that properly and accurately itemizes all wages,
6 missed meal and rest periods, and reporting time wages owed to PLAINTIFF and the other
7 AGGRIEVED EMPLOYEES and thereby also failed to set forth the correct wages earned by the
8 employees.

9 106. DEFENDANTS knowingly and intentionally failed to comply with Labor Code
10 section 226(a) on each and every wage statement that they should have provided to PLAINTIFF.

11 107. By failing to keep adequate records, as required by Labor Code section 226,
12 DEFENDANTS injured PLAINTIFF, making it difficult for PLAINTIFF to calculate the
13 expenditures the employer did not reimburse. Those injuries include unpaid wages, interest, and
14 penalties thereon.

15 108. PLAINTIFF seeks to recover the statutory penalties provided by Labor Code section
16 226(e) for the wage statement violations committed by DEFENDANTS.

17 **SIXTH CAUSE OF ACTION**

18 For Failure to Pay Overtime Compensation
19 (Cal. Lab. Code §§ 510, 1194, 1198 et seq.)
20 (Against All DEFENDANTS)

21 109. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
22 and every allegation set forth above.

23 110. PLAINTIFF bring a claim for DEFENDANTS' willful and intentional violations of
24 the California Labor Code and the Industrial Welfare Commission requirements for
25 DEFENDANTS' failure to pay PLAINTIFFS for all overtime worked, including, work performed
26 in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

27 111. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
28 policy, an employer must timely pay its employees for all hours worked.

112. Cal. Lab. Code § 510 further provides that employees in California shall not be

1 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
2 unless they receive additional compensation beyond their regular wages in amounts specified by
3 law.

4 113. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
5 including minimum wage and overtime compensation and interest thereon, together with the costs
6 of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
7 than those fixed by the Industrial Welfare Commission is unlawful.

8 114. DEFENDANTS required PLAINTIFF to work but failed to pay PLAINTIFF for all
9 the time worked, including overtime.

10 115. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
11 without limitation, applicable to the AGGRIEVED EMPLOYEES, as a result of implementing a
12 uniform practice that failed to accurately record overtime worked by PLAINTIFF and other
13 AGGRIEVED EMPLOYEES and denied accurate compensation to PLAINTIFF and the
14 AGGRIEVED EMPLOYEES for overtime worked, including, the overtime work performed in
15 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

16 116. Further, DEFENDANTS required PLAINTIFF and other AGGRIEVED
17 EMPLOYEES to provide and use their own tools in discharge of work duties. In doing so,
18 DEFENDANTS failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES double
19 wage as required in January 2023.

20 117. In committing these violations of the California Labor Code, DEFENDANTS
21 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
22 PLAINTIFF and other AGGRIEVED EMPLOYEES. DEFENDANTS acted in an illegal attempt
23 to avoid the payment of all earned wages, and other benefits in violation of the California Labor
24 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

25 118. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
26 PLAINTIFF and the other AGGRIEVED EMPLOYEES did not receive full compensation for
27 overtime worked.

28 119. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from

1 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and
2 the other AGGRIEVED EMPLOYEES. Further, PLAINTIFF and the other AGGRIEVED
3 EMPLOYEES were not subject to a valid collective bargaining agreement that would preclude the
4 causes of action contained herein this Complaint. Rather, PLAINTIFF bring this Action on behalf
5 of himself, and AGGRIEVED EMPLOYEES based on DEFENDANTS' violations of non-
6 negotiable, non-waivable rights provided by the State of California.

7 120. DEFENDANTS paid PLAINTIFF and the AGGRIEVED EMPLOYEES less
8 overtime than they are entitled to, constituting a failure to pay all earned wages.

9 121. DEFENDANTS failed to accurately pay PLAINTIFFS and the other AGGRIEVED
10 EMPLOYEES overtime wages for the time they worked which was in excess of the maximum hours
11 permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF
12 and the other AGGRIEVED EMPLOYEES were required to work, and did in fact work from time-
13 to-time, overtime as to which DEFENDANTS failed to accurately record and pay as witnessed by
14 employees.

15 122. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
16 compensation to PLAINTIFF and the other AGGRIEVED EMPLOYEES for all overtime worked
17 by these employees, PLAINTIFF and the AGGRIEVED EMPLOYEES have suffered and will
18 continue to suffer an economic injury in amounts which are presently unknown to them, and which
19 will be ascertained according to proof at trial.

20 123. DEFENDANTS knew or should have known that PLAINTIFF and the other
21 AGGRIEVED EMPLOYEES were under-compensated for all overtime worked. DEFENDANTS
22 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
23 employees for their labor as a matter of uniform company policy, practice and procedure, and
24 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
25 AGGRIEVED EMPLOYEES for overtime worked.

26 124. In performing the acts and practices herein alleged in violation of California labor
27 laws, and refusing to compensate the members of AGGRIEVED EMPLOYEES for all overtime
28 worked and provide them with the requisite overtime compensation, DEFENDANTS acted and

1 continue to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
2 AGGRIEVED EMPLOYEES with a conscious and utter disregard for their legal rights, or the
3 consequences to them, and with the despicable intent of depriving them of their property and legal
4 rights, and otherwise causing them injury in order to increase company profits at the expense of
5 these employees.

6 125. PLAINTIFF and the other AGGRIEVED EMPLOYEES therefore request recovery
7 of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as well
8 as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
9 California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime
10 compensation is determined to be owed to AGGRIEVED EMPLOYEES who have terminated their
11 employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore
12 these employees would also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
13 penalties are sought herein on behalf of these AGGRIEVED EMPLOYEES. DEFENDANTS'
14 conduct, as alleged herein, was willful, intentional, and not in good faith. Further, PLAINTIFF and
15 other AGGRIEVED EMPLOYEES are entitled to seek and recover statutory costs.

16 **SEVENTH CAUSE OF ACTION**
17 For Failure to Provide Required Meal Periods
(Cal. Lab. Code §§ 226.7& 512)
18 (Against All DEFENDANTS)

19 126. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
20 and every allegation set forth above.

21 127. DEFENDANTS failed to provide all the legally required off-duty meal breaks to
22 PLAINTIFF and the other AGGRIEVED EMPLOYEES as required by the applicable Wage Order
23 and Labor Code. The nature of the work performed by PLAINTIFF and AGGRIEVED
24 EMPLOYEES did not prevent these employees from being relieved of all of their duties for the
25 legally required off-duty meal periods. As a result of their work schedules, required deadlines, and
26 practices by DEFENDANTS, PLAINTIFF and other AGGRIEVED EMPLOYEES were often not
27 fully relieved of duty by DEFENDANTS for their meal periods.

28 128. As a result, PLAINTIFF forfeited meal breaks without additional compensation and
in accordance with DEFENDANT's strict practices and deadlines.

1 129. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable
2 IWC Wage Order by failing to compensate PLAINTIFF and AGGRIEVED EMPLOYEES who
3 were not provided a meal period, in accordance with the applicable Wage Order, one additional
4 hour of compensation at each employee's regular rate of pay for each workday that a meal period
5 was not provided.

6 130. As a proximate result of the aforementioned violations, PLAINTIFF and
7 AGGRIEVED EMPLOYEES have been damaged in an amount according to proof at trial, and seek
8 all wages earned and due, interest, penalties, expenses and costs of suit.

9 **EIGHTH CAUSE OF ACTION**
10 For Failure to Provide Rest Periods
11 (Cal. Lab. Code §§ 226.7 & 512)
 (Against All DEFENDANTS)

12 131. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
13 and every allegation set forth above.

14 132. From time to time, PLAINTIFF and other AGGRIEVED EMPLOYEES were
15 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
16 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
17 shifts worked at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
18 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third
19 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF
20 and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages in lieu thereof.
21 As a result of the strict work deadlines and practices by DEFENDANTS, PLAINTIFF and other
22 AGGRIEVED EMPLOYEES were denied their proper rest periods by DEFENDANTS and
23 DEFENDANTS' managers.

24 133. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable
25 IWC Wage Order by failing to compensate PLAINTIFF and AGGRIEVED EMPLOYEES who
26 were not provided a rest period, in accordance with the applicable Wage Order, one additional hour
27 of compensation at each employee's regular rate of pay for each workday that rest period was not
28 provided.

1 134. As a proximate result of the aforementioned violations, PLAINTIFF and
2 AGGRIEVED EMPLOYEES have been damaged in an amount according to proof at trial, and seek
3 all wages earned and due, interest, penalties, expenses and costs of suit.

4 **NINTH CAUSE OF ACTION**

5 For Recovery of Civil Penalties Under the Labor Code Private Attorney General Act
6 (Cal. Lab. Code §§ 2698 et seq.)
7 (Against All DEFENDANTS)

8 135. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
9 and every allegation set forth above.

10 136. As a result of the acts alleged herein, PLAINTIFF, as an AGGRIEVED
11 EMPLOYEE within the meaning of Labor Code section 2699, subdivision (c), on behalf of himself
12 and all other AGGRIEVED EMPLOYEES of DEFENDANTS, seek the recovery of civil penalties
13 against DEFENDANTS pursuant to California Labor Code sections 2698 et seq., for the following
14 knowing and intentional violations of the California Labor Code:

15 a. For failing to indemnify PLAINTIFF, other employees, and the other AGGRIEVED
16 EMPLOYEES for expenditures incurred by such employees in direct consequence of their
17 discharge of duties (i.e., personal cell phone use and personal vehicle use) in violation of Labor
18 Code section 2802;

19 b. For failing to pay wages promptly or when due and payable, in violation of Labor
20 Code sections 201, 202, 203, and 204;

21 c. For failing to maintain for and provide to PLAINTIFF, and other employees the
22 accurate, itemized wage statements required by Labor Code Section 226.

23 d. For failing to compensate PLAINTIFFS and other employees who were not provided
24 a rest period in violation of Labor Code Section 226.7; and

25 e. For failing to provide employees who worked more than eight (8) hours per workday
26 and more than forty (40) hours per workweek additional compensation beyond their regular wages
27 in violation of Labor Code Section 510.

28 137. The above-referenced civil penalties shall include the recovery of amounts specified
in the applicable sections of the Labor Code, and if not specifically provided, those under section
2699(f), and shall include those amounts sufficient to recover underpaid wages, including all

1 necessary expenditures or losses incurred by PLAINTIFFS and other employees, pursuant to Labor
2 Code sections §§ 201, 202, 203, 204, 226, 226.7, 510, 1174, 1198.5, 2802, and 2699, subdivisions
3 (a) and (f).

4 138. PLAINTIFF filed this complaint after the LWDA was afforded the opportunity to
5 consider PLAINTIFF'S notice of DEFENDANTS' Labor Code violations and of PLAINTIFF'S
6 intent to prosecute a private enforcement action for civil penalties under PAGA. After the LWDA
7 declined to investigate, PLAINTIFF brought this PAGA cause of action against DEFENDANTS,
8 pursuant to California Labor Code section 2699.3, subdivision (a)(2)(A).

9 **DEMAND FOR RELIEF**

10 WHEREFORE, PLAINTIFF prays for a judgment against each DEFENDANT, jointly and
11 severally, as follows:

12 1. On behalf of the PLAINTIFF:

- 13 A. An order temporarily, preliminarily and permanently enjoining and restraining
14 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- 15 B. An order requiring DEFENDANTS to pay all overtime wages and all sums unlawfully
16 withheld from compensation due to PLAINTIFF and the other AGGRIEVED
17 EMPLOYEES; and
- 18 C. Compensatory damages, according to proof at trial, including compensatory damages
19 for overtime compensation, due to PLAINTIFF and the other AGGRIEVED
20 EMPLOYEES, during the applicable PAGA PERIOD plus interest thereon at the
21 statutory rate;
- 22 D. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
23 applicable IWC Wage Order;
- 24 E. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
25 a violation occurs and one hundred dollars (\$100) per each member of the AGGRIEVED
26 EMPLOYEES for each violation in a subsequent pay period, not exceeding an aggregate
27 penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal.
28 Lab. Code § 226.

1 F. The wages of all terminated employees from the AGGRIEVED EMPLOYEES as a
2 penalty from the due date thereof at the same rate until paid or until an action therefore
3 is commenced, in accordance with Cal. Lab. Code §203.

4 On Behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

5 A. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General
6 Act of 2004;

7 On all claims:

8 A. An order requiring DEFENDANTS to pay all overtime wages and all sums unlawfully
9 withheld from compensation due to PLAINTIFF and the other AGGRIEVED
10 EMPLOYEES; and

11 B. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for
12 restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFF and
13 to the other AGGRIEVED EMPLOYEES.

14 C. An award of interest, including prejudgment interest at the legal rate;

15 D. Such other and further relief as the Court deems just and equitable; and

16 E. An award of penalties, attorneys' fees and cost of suit, as allowable under the law.

17
18 DATED: June 1, 2023

Respectfully submitted,

19
20 **EMRAN LAW**

21 

22 _____
Harris Emran
23 Attorney for PLAINTIFF
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: June 1, 2023

EMRAN LAW



Harris Emran
Attorney for PLAINTIFF

EXHIBIT C

Harris Emran (SBN 329674)
Kaitlin Martinez (SBN 348006)
EMRAN LAW FIRM
415 Mission Street, 37th Floor
San Francisco, California 94105
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Attorneys for Plaintiff,
Michael Guillen

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

Michael Guillen, on behalf of themselves and
on behalf of all persons similarly situated,

Plaintiff,

v.

Concord Automotive Sales and Service Inc.,
and DOES 1-25.

Defendants.

Case No: C23-01333

JOINT STIPULATION TO STAY CASE

Plaintiff MICHAEL GUILLEN and Defendant CONCORD AUTOMOTIVE SALES
AND SERVICE, INC., (the “Parties”) by and through their respective attorneys of record, jointly
enter into the following stipulation:

WHEREAS, on June 1, 2023, Plaintiff filed a civil complaint alleging wage and hour
violations and sought penalties pursuant to the California Attorneys General Act of 2004
(“PAGA”) arising from his employment with DEFENDANTS;

WHEREAS, Defendant’s answer is expected on June 20, 2023;

WHEREAS, the Parties are involved in on-going discussions regarding the potential
resolution of this case;

1 WHEREAS, the Parties wish to avoid incurring potentially unnecessary expenses in light
2 of their agreement and efforts, and therefore agreed to suspend their litigation efforts, including all
3 pleading deadlines, motions to compel, and discovery deadlines, while discussions to resolve the
4 case are pending;

5 WHEREAS, the Parties also agree to stay action, including all deadlines and all formal
6 discovery until September 4, 2023, forty-five (45) days following the date DEFENDANTS'
7 responsive pleading is due;

8 WHEREAS, the Parties also agree Defendant's responsive pleading will be due on
9 October 4, 2023, thirty (30) days from the date the stay is lifted;

10 WHEREAS, the Parties also agree that the time period during which the matter is stayed
11 pursuant to this stipulation will not accrue towards the time to bring an action to trial pursuant to
12 Code of Civil Procedure section 583.310;

13 NOW, THEREFORE, subject to the Court's approval, the Parties hereby STIPULATE
14 AND AGREE, through their counsel, that Plaintiff's lawsuit is stayed in its entirety until
15 September 4, 2023, for forty-five (45) days following the date Defendants' responsive pleading is
16 due, and Defendants' responsive pleading will be due October 4, 2023.

17
18 Dated: July 19, 2023

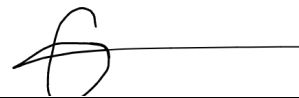
EMRAN LAW



Harris Emran
Attorney for Plaintiff

22
23 Dated: July 19, 2023

JONES LAW FIRM



Charles A. Jones
Attorney for Defendants

[PROPOSED] ORDER

Having read and reviewed the stipulation of Parties, and good cause appearing therefore,

IT IS HEREBY ORDERED:

1. That Plaintiff's lawsuit is stayed in its entirety until September 4, 2023, forty-five (45) days from the date Defendants responsive pleading is due.

2. That Defendants' responsive pleading is due October 4, 2023, thirty (30) days from the date the stay is lifted.

IT IS FURTHER ORDERED:

IT IS SO ORDERED.

DATED:

By:

Judge of the Superior Court

EXHIBIT D

Harris Emran (SBN 329674)
Kaitlin Martinez (SBN 348006)
EMRAN LAW FIRM
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Kaitlin@Emranlaw.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

Michael Guillen, on behalf of themselves and
on behalf of all persons similarly situated,

Plaintiff,

v.

Concord Automotive Sales and Service Inc.,
and DOES 1-25.

Defendants.

Case No: C23-01333

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (the “Agreement”) is entered into by and between Plaintiff Michael Guillen (“Plaintiff”), individually and on behalf of the State of California and all PAGA Group Members (defined below), and Defendant Concord Automotive Sales and Service, Inc. (“Defendant”), subject to the approval of the Court. In consideration of the promises and mutual covenants and agreements herein contained, Plaintiff and Defendant (collectively, the “Parties”) hereby covenant and agree as follows:

1. RECITALS

1.1 On June 1, 2023, Plaintiff filed a civil complaint in Contra Costa (Case No. C23-01333) alleging wage and hour violations and also sought penalties pursuant to the California

1 Attorney General Act of 2004 (“PAGA”) on behalf of all other hourly, piece-rate non-exempt
2 employees who worked for Defendant in California between March 22, 2022, to the date the
3 Court approves this Settlement.

4 1.2 Plaintiff s Complaint alleges causes of action for (1) unfair competition; (2) failure
5 to pay minimum wages; (3) failure to reimburse business expenses; (4) failure to pay wages when
6 due; (5) failure to provide accurate, itemized wage statements; (6) failure to pay overtime
7 compensation; (7) failure to provide required meal periods; (8) failure to provide rest periods; (9)
8 recover of civil penalties under the Labor Code Private Attorney General Act. Plaintiff’s
9 Complaint seeks recovery of alleged unpaid wages, liquidated damages, compensatory damages,
10 restitution, meal and rest period premium payments, PAGA penalties, interest, costs, reasonable
11 attorneys’ fees, and declaratory relief. Defendant denies all claims, denies that Plaintiff and other
12 Aggrieved Employees are entitled to any recovery..

13 1.3 On August 08, 2023, the parties entered into a Joint Stipulation to stay the above-
14 entitled action pending settlement negotiations. Shortly after the filing of the Complaint,
15 Defendant served on Plaintiff a request for the production certain documents and data relating to
16 the claims alleged on behalf of himself and other allegedly aggrieved employees. Thereafter,
17 Defendant provided to Plaintiff voluminous documents and other data relating to all of the claims
18 alleged by Plaintiff. The documents and data produced include, but are not limited to: (1)
19 Defendant’s Employee Handbook; (3) Position or Job Descriptions for all non-exempt
20 employees who have been employed by Defendant on a piece-rate basis or whose compensation
21 includes the payment of an hourly wage and a productivity bonus or commission; (4) the
22 complete personnel file for Plaintiff including all wage statements and Plaintiff’s payment
23 history; (5) data relating to the number of allegedly aggrieved employees and their corresponding
24 pay periods; and (6) all of Defendant’s policies and procedures applicable to Plaintiff and the
25 allegedly aggrieved employees.

26 1.4 This Action has been actively investigated with the Parties performing an
27 exchange of documents and information. the Parties investigated the facts and analyzed the
28 relevant legal issues with regard to the claims and defenses in the Action. Based on this

1 investigation and analysis, Plaintiff believes the Action has merit, while Defendant believes the
2 Action has no merit. The Parties have each considered the uncertainties of continued litigation
3 and the benefits to be obtained under the proposed settlement, and have considered the costs,
4 risks, and delays associated with the continued prosecution of the Action and the likely appeals of
5 any rulings in favor of either Plaintiff or Defendant. At all times, the Parties' settlement
6 negotiations have been non-collusive, adversarial, and at arm's length.

7 1.5 Solely for purpose of settling this case, the Parties stipulate and agree that the
8 requisites for establishing Plaintiff's standing as an "Aggrieved Employee" has been satisfied.

9 1.6 Defendant denies any liability or wrongdoing of any kind whatsoever associated
10 with the claims alleged in the Action. With respect to Plaintiff's claims, Defendant contends,
11 among other things, that it has complied with all applicable state, federal, and local laws affecting
12 Plaintiff and other Aggrieved Employees.

13 1.7 It is the Parties' intention and the objective of this Agreement to avoid the costs of
14 further litigation and trial, and to settle and dispose of, fully and completely and forever, the
15 claims released herein and described below.

16 **2. DEFINITIONS**

17 As used in this Agreement, the terms set forth in this Section 2 shall have the meanings
18 ascribed to them below.

19 2.1 "Action" means the above captioned action entitled Michael Guillen v. Concord
20 Automotive Sales and Services Inc, Case No. C23-01333, currently pending in the Superior Court
21 of the State of California, County of Contra Costa.

22 2.2 "Administrator" means Phoenix Settlement Administrators, the neutral entity the
23 Parties have Agreed to administer this Settlement.

24 2.3 "Aggrieved Employee" means Plaintiff and all persons who are employed or have
25 been employed by Defendant in California as an hourly non-exempt employee either paid on a
26 piece-rate basis or whose compensation includes the payment of an hourly wage and a
27 productivity bonus or commission during the PAGA Period.
28

2.4 “Agreement” means this PAGA Settlement Agreement, including all Exhibits referred to herein and attached hereto.

2.5 “Approval Date” means the date on which the Court enters the Order Approving Settlement and Judgment Thereon.

2.6 “Approval Order” or “Judgment” means the Order Approving Settlement and Judgment Thereon approving the Settlement and this Agreement, which shall substantially conform to Exhibit A hereto.

2.7 “Defendant” means Concord Automotive Sales and Service, Inc.

2.8 “Complaint” means the complaint filed by Plaintiff in the Action on June 1, 2023.

2.9 “Court” means the Superior Court of California, County of Contra Costa.

2.10 “Defendant’s Counsel” means the Jones Law Firm LLC.

2.11 “Effective Date” means either (a) the date 60 days after entry of the Approval Order and Judgment, if no motions for reconsideration and no appeals or other efforts to obtain review have been filed, or (b) in the event a motion for reconsideration, an appeal or other effort to obtain review of the Approval Order and Judgment, the date 60 days after such reconsideration, appeal, or review has been finally concluded and is no longer subject to review, whether by appeal, petition for rehearing, petition for review, or otherwise.

2.12 “Fee and Expense Award” means such award of attorneys’ fees and costs/expenses as the Court may authorize to be paid to Plaintiff’s Counsel for the services they have rendered in the Action.

2.13 “General Release Payment” means the payment to Plaintiff for damages for the Labor Code violations alleged in the Complaint, separate and apart from any Settlement Payment, to be paid from the Gross Settlement Amount.

2.14 “Gross Settlement Amount” means One Hundred Twenty-Five Thousand Dollars and No Cents (\$125,000.00), which is the maximum total amount that Defendant shall be required to pay for any and all purposes under this Agreement. The following shall be paid from the Gross Settlement Amount pursuant to the Plan of Allocation set forth in Section 4.4, below:

(a) the LWDA Payment, (b) the Settlement Payments to PAGA Group Members, (c) the Fee and

1 Expense Award, (d) the General Release Payment, and (e) the Settlement Administration Costs.
2 Under no circumstances shall Defendant pay any sum in excess of the Gross Settlement Amount
3 in connection with the Settlement.

4 2.15 "LWDA" means the California Labor and Workforce Development Agency.

5 2.16 "LWDA Payment" means the portion of the Gross Settlement Amount to be paid
6 to the LWDA under this Agreement, which shall equal 75 percent of the Net Settlement Sum.

7 2.17 "Net Settlement Sum" means the Gross Settlement Amount less the following:
8 (a) the Fee and Expense Award, (b) the General Release Payment, and (c) the Settlement
9 Administration Costs.

10 2.18 "Notice of Settlement" means the notice to be mailed to PAGA Group Members
11 with their Settlement Payments, which shall substantially conform to Exhibit B hereto.

12 2.19 "PAGA" means the Labor Code Private Attorneys General Act of 2004 (Lab.
13 Code, § 2698, et seq.).

14 2.20 "PAGA Group Members" or "Members" means Plaintiff and all persons who are
15 employed, or have been employed, by Defendant in California as an hourly non-exempt employee
16 who were either paid on a piece-rate basis or whose compensation included the payment of an
17 hourly wage and a productivity bonus or commission from March 22, 2022 through the Approval
18 Date.

19 2.21 "PAGA Group Members Payment" means the aggregate sum of all Settlement
20 Payments that the Settlement Administrator determines are owed to PAGA Group Members
21 under this Agreement, which shall equal 25 percent of the Net Settlement Sum.

22 2.22 "PAGA Period" means the time period from March 22, 2022 to the Approval
23 Date.

24 2.23 "Parties" means plaintiff Michael Guillen, on behalf of himself, the State of
25 California, and all PAGA Group Members, and defendant Concord Automotive Sales and
26 Service, Inc.

1 2.24 “Pay Periods” means the number of pay periods in the PAGA Period during which
2 a PAGA Group Member worked for Defendant for at least one day. Pay Periods will be
3 calculated according to Defendant’s records.

4 2.25 “Plaintiff” means plaintiff Michael Guillen.

5 2.26 “Plaintiff’s Counsel” Emran Law Firm, the attorneys representing the Plaintiff and
6 other Aggrieved Employees in the Action.

7 2.27 “Plan of Allocation” means the manner in which the Net Settlement Sum shall be
8 paid to the LWDA and PAGA Group Members as set forth in Section 4.4, below.

9 2.28 “Released Claims” means any and all claims, causes of action, complaints,
10 charges, and demands that are alleged in the Action and/or Plaintiff’s PAGA notice that was
11 submitted to the LWDA on or about March 22, 2023 or that could have been alleged based on the
12 facts alleged in the Action and/or the PAGA notice, including without limitation to claims under
13 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1997.1, 1198,
14 2802, Bus. & Prof. Code § 17200, and the applicable California Industrial Commission Wage
15 Orders, as set forth in more detail in Section 5.1. The Released Claims are released by Plaintiff,
16 the State of California and the PAGA Group Members as part of this Settlement.

17 2.29 “Released Parties” means Defendant Concord Automotive Sales and Service, Inc.,
18 California Automotive Retailing Group, Inc., their respective past, present, and future direct and
19 indirect subsidiaries, parent companies and affiliates of any of the foregoing; and (iv) the past,
20 present, and future shareholders, directors, officers, agents, employees, attorneys, insurers,
21 members, partners, managers, contractors, agents, consultants, representatives, administrators,
22 fiduciaries, benefit plans, transferees, predecessors, successors and assigns of any of the
23 foregoing.

24 2.30 “Settlement” means this Agreement and all actions taken pursuant to and in
25 furtherance of this Agreement.

26 2.31 “Settlement Administration Costs” means the amount approved by the Court to be
27 paid to the Settlement Administrator from the Gross Settlement Amount for administration of the
28 Settlement, estimated to be no more than [\$1,500.00].

1 2.32 “Settlement Administrator” means Phoenix Settlement Administrators or such
2 professional, third-party administrator as may be approved by the Court, which shall be
3 responsible for administering the Settlement pursuant to the terms of this Agreement and the
4 Judgment. The Settlement Administrator shall agree to confidentiality terms as may be required
5 by Defendant regarding personnel, payroll, and any other data provided to the Settlement
6 Administrator.

7 2.33 “Settlement Payment” means the amount that the Settlement Administrator
8 determines is owed to a PAGA Group Member pursuant to the Plan of Allocation described in
9 Section 4.4, below.

10 2.34 “Settlement Fund” means the fund established and administered by the Settlement
11 Administrator for the purpose of receiving and disbursing amounts to be paid to the LWDA, the
12 PAGA Group Members, Plaintiff, Plaintiff’s Counsel, and the Settlement Administrator pursuant
13 to this Agreement. The Settlement Fund shall be funded by Defendant following the Effective
14 Date in accordance with Section 4.6.1, below.

15 2.35 “Settlement Fund Amount” means the total amount that Defendant shall remit to
16 the Settlement Administrator in accordance with Section 4.6.1, below, which shall consist of the
17 following amounts, the aggregate of which shall not exceed the Gross Settlement Amount:
18 (a) the LWDA Payment, (b) the PAGA Group Members Payment, (c) the Fee and Expense
19 Award, (d) the General Release Payment, and (e) the Settlement Administration Costs.

20 **3. SETTLEMENT TERMS**

21 3.1 **Motion to Approve PAGA Settlement.** Promptly upon the Parties’ execution of
22 this Agreement, Plaintiff shall file a motion for an order approving the Settlement, including
23 (without limitation) the payment to the LWDA of 75 percent of the Net Settlement Sum.
24 Concurrently therewith, Plaintiff shall submit a copy of this Agreement to the LWDA, in
25 accordance with Labor Code section 2699, subdivision (l)(2). Plaintiff will have sole
26 responsibility for drafting and filing the motion for approval of the Settlement but will provide his
27 proposed moving papers to Defendant for review and comment at least three business days before
28 filing them with the Court.

1 **3.2 Attorneys' Fees and Costs.** Defendant agrees not to oppose Plaintiff's
2 application for attorneys' fees of up to [\$41,000.00] and costs not to exceed [\$563.25], which
3 shall be subject to the Court's approval. Plaintiff agrees not to apply for attorneys' fees of more
4 than [\$41,000.00] or for costs of more than [\$563.25], and in no event shall Defendant be liable
5 for any attorneys' fees or costs in excess of these amounts. The Fee and Expense Award shall
6 represent payment for all claims for Plaintiff's Counsel's attorneys' fees and costs, past and
7 future, incurred in the Action. The Fee and Expense Award shall be paid from the Gross
8 Settlement Amount, and Defendant shall not otherwise be required to pay for any portion of
9 Plaintiff's Counsel's attorneys' fees, costs, or expenses. The Fee and Expense Award shall be
10 paid to Plaintiff's Counsel following the Effective Date, in accordance with Section 4.6.2, below.
11 An award by the Court of attorneys' fees or costs that is less than the amounts applied for will not
12 be grounds for Plaintiff or Plaintiff's Counsel to challenge or withdraw from the Settlement, and
13 any amounts not awarded in attorneys' fees or costs will be included in the Net Settlement Sum.

14 **3.3 General Release Payment.** Plaintiff shall receive the payment of \$32,500.00 in
15 damages to compensate him individually for all of the claims and causes of action alleged on the
16 Complaint, as well as for Plaintiff's efforts as representative of the PAGA Group Members and in
17 consideration of Plaintiff's general release of claims set forth in Section 5.2, below. The General
18 Release Payment shall be reported by the Settlement Administrator as Wages for which
19 appropriate withholdings will be deducted by the Settlement Administrator. For purposes of this
20 Settlement, the General Release Payment shall be allocated 60% to unpaid Wages and 40% to
21 penalties/interest. The General Release Payment is separate from and in addition to any
22 Settlement Payment to be paid to Plaintiff as a PAGA Group Member hereunder. An award by
23 the Court of a General Release Payment that is less than the amount applied for will not be
24 grounds for Plaintiff or Plaintiff's Counsel to challenge or withdraw from the Settlement, and any
25 amount not awarded in the General Release Payment will be included in the Net Settlement Sum.

26 **3.4 Delivery of Settlement Amount by Defendant.** In full settlement of the Released
27 Claims and following the Effective Date, Defendant shall deliver the Settlement Fund Amount to
28

1 the Settlement Administrator for establishment of the Settlement Fund, in accordance with
2 Section 4.6.1, below.

3 **3.5 Interim Stay of Proceedings.** Except as set forth in Section 3.1, above, the
4 Parties agree to the entry of a formal stay of all proceedings in the Action, except such
5 proceedings as may be necessary to implement and complete the Settlement.

6 **4. SETTLEMENT PROCEDURES**

7 **4.1 Notification to the LWDA.** Plaintiff shall submit to the LWDA a copy of the
8 Judgment within ten (10) days after its entry, in accordance with Labor Code section 2699,
9 subdivision (1)(3).

10 **4.2 Information Regarding PAGA Group Members.** Within ten (10) business days
11 from the Effective Date, Defendant will provide the Settlement Administrator the following
12 information with respect to each PAGA Group Member: (i) name, (ii) last known residence
13 address of record with Defendant, (iii) social security number, and (iv) number of Pay Periods
14 worked by the PAGA Group Member during the PAGA Period. The information Defendant
15 provides to the Settlement Administrator, along with any updated contact information identified
16 by the Settlement Administrator as set forth in Section 4.3, below, shall be used solely to
17 administer the Settlement Payment process described herein, shall remain confidential, and shall
18 not be disclosed to anyone, except pursuant to the express written authorization of Defendant or
19 the PAGA Group Member in question, by order of the Court, or to the extent necessary to fulfill
20 the Settlement Administrator's reporting obligations hereunder.

21 **4.3 Settlement Administrator Duties.** The Settlement Administrator's duties shall
22 include, without limitation: (i) taking receipt of and safeguarding the Settlement Fund Amount
23 and establishing the Settlement Fund; (ii) calculating and distributing the LWDA Payment,
24 Settlement Payments to PAGA Group Members, Fee and Expense Award, and General Release
25 Payment, provided such amounts are approved by the Court; (iii) issuing all tax forms required by
26 law; (iv) filing reports with the taxing authorities as required by law; and (v) establishing a
27 toll-free number for PAGA Group Members to call the Settlement Administrator with any
28 questions regarding the Settlement, together with such other tasks as the Parties may mutually

1 agree or the Court may order the Settlement Administrator to perform. The Settlement
2 Administrator shall take all reasonable steps to ensure that (a) the highest percentage of PAGA
3 Group Members receive their Settlement Payments, and (b) it has the most current and accurate
4 addresses for the PAGA Group Members, including but not limited to performing an initial
5 National Change of Address database search on all formerly employed PAGA Group Members.
6 In addition, the Settlement Administrator shall perform a standard search, also known as “batch,”
7 “skip trace,” or “credit header” searches, on all addresses returned as undeliverable. The
8 Settlement Administrator shall immediately re-mail returned checks tendered to the PAGA Group
9 Members to all updated addresses obtained through its efforts to locate their most current and
10 accurate addresses.

11 **4.4 Plan of Allocation: Calculation of Settlement Payments.** The Settlement
12 Administrator shall be responsible for the calculation of Settlement Payments to the PAGA Group
13 Members. The Settlement Payments will be paid on a pro rata basis as follows:

14 4.4.1 Before computing the amounts of any Settlement Payments to be paid to
15 PAGA Group Members, the Settlement Administrator shall determine the amount of the PAGA
16 Group Members Payment by deducting from the Gross Settlement Amount the following: (a) the
17 LWDA Payment, (b) the Fee and Expense Award, (c) the General Release Payment, and (d) the
18 Settlement Administration Costs.

19 4.4.2 The Settlement Payment for each PAGA Group Member shall be the
20 PAGA Group Member’s pro-rata share of the PAGA Group Members Payment, calculated as
21 follows: The Settlement Administrator shall calculate the total number of Pay Periods worked by
22 all PAGA Group Members during the PAGA Period. The Settlement Administrator will then
23 divide the PAGA Group Members Payment by the total number of Pay Periods, resulting in a per
24 Pay Period value for each PAGA Group Member. The Settlement Administrator will then take
25 the per Pay Period value and multiply it by the number of Pay Periods worked by each PAGA
26 Group Member.

27 4.4.3 The Settlement Administrator shall determine the Settlement Payment that
28 each PAGA Group Member is entitled to receive, pursuant to the formula set forth in

1 Section 4.4.2, above. In order to determine the amount of the Settlement Payment to which each
2 PAGA Group Member is entitled, the Settlement Administrator shall use the information
3 provided by Defendant pursuant to Section 4.2, above.

4 **4.5 Taxes.**

5 **4.5.1 PAGA Group Member Obligations.** Each PAGA Group Member shall
6 be individually responsible for remitting and paying applicable federal, state, and local income
7 taxes, if any, on all amounts such person receives pursuant to this Agreement, and Defendant
8 shall have no liability therefor.

9 **4.5.2 Settlement Administrator Responsibilities Regarding Taxes.** It shall be
10 the responsibility of the Settlement Administrator or its designee to timely and properly prepare
11 and deliver the necessary tax documentation to all necessary parties and to report all necessary
12 information to the applicable government entities as required by law. All payments to the
13 LWDA, PAGA Group Members, Plaintiff, and Plaintiff's Counsel pursuant to this Agreement
14 shall be reported on IRS Form 1099-MISC, to the extent required by law.

15 **4.5.3 No Claims.** No person shall have any claim against Defendant, the
16 Released Parties, Defendant's Counsel, Plaintiff, Plaintiff's Counsel, or the Settlement
17 Administrator based on mailings, distributions, and payments made in accordance with or
18 pursuant to this Agreement.

19 **4.6 Distribution of Settlement Payments.** After the Effective Date, the Settlement
20 Payments shall be distributed to PAGA Group Members in accordance with the procedures set
21 forth below:

22 **4.6.1 Remittance of Settlement Fund Amount.** Within ten (10) business days
23 from the Effective Date, Defendant will remit the Settlement Fund Amount to the Settlement
24 Administrator for the establishment of the Settlement Fund.

25 **4.6.2 Delivery of Payments.** Within five (5) days after Defendant's remittance
26 to the Settlement Administrator of the Settlement Fund Amount, the Settlement Administrator
27 shall establish the Settlement Fund and distribute (a) the LWDA Payment, (b) the Settlement
28 Payments to PAGA Group Members, (c) the Fee and Expense Award, (d) the General Release

1 Payment, and (e) the Settlement Administration Costs. No payments shall be made until the
2 Judgment is final (meaning the right to appeal or otherwise seek review of the Judgment has
3 expired) and on the condition that no appeals from the Judgment have been filed.

4 **4.6.3 Negotiation of Settlement Checks.** Settlement checks tendered to PAGA
5 Group Members shall remain valid and negotiable for one hundred eighty (180) days following
6 the date of their issuance and shall thereafter be automatically voided if not cashed by the PAGA
7 Group Member within that time. Upon the voiding of a PAGA Group Member's check, the
8 PAGA Group Member's right to participate in the Settlement shall be extinguished, although the
9 individual shall remain a PAGA Group Member bound by the Judgment entered in the Action. In
10 the event any checks remain uncashed for any reason after this 180-day period, the Settlement
11 Administrator shall remit to the California Controller's Unclaimed Property Fund in the name of
12 the Aggrieved Employee. Administration of the Settlement shall be completed no later than two
13 hundred and seventy (270) days after the Effective Date.

14 **4.7 Discharge of Defendant's Obligations.** Defendant shall fully discharge its
15 obligations to Plaintiff, the LWDA, and the PAGA Group Members after providing the
16 information on the PAGA Group Members to the Settlement Administrator as set forth in
17 Section 4.2, above, and following the remittance of the Settlement Fund Amount to the
18 Settlement Administrator as set forth in Section 4.6.1, above, regardless of whether checks
19 representing individual Settlement Payments are actually received and/or negotiated by PAGA
20 Group Members. Once Defendant has complied with its obligations set forth in Sections 4.2
21 and 4.6.1, above, it will be deemed to have satisfied all terms and conditions to which it is subject
22 under this Agreement, shall be entitled to all protections afforded to it under the Agreement, and
23 shall have no further obligations under the Agreement, regardless of what occurs with respect to
24 the further administration of the Settlement.

25 **4.8 Notification and Certification by Settlement Administrator.** The Settlement
26 Administrator shall keep Defendant's Counsel and Plaintiff's Counsel apprised of the status of the
27 settlement administration process and its distribution of Settlement Payments. Upon completion
28 of administration of the Settlement, the Settlement Administrator shall provide a detailed, written

1 certification of such completion to the Parties, including the amounts paid to the LWDA, PAGA
2 Group Members (in the aggregate), Plaintiff's Counsel, Plaintiff, and the Settlement
3 Administrator.

4 **4.9 Nullification of Settlement Agreement If Settlement Not Approved.** In the
5 event the Court does not approve the Settlement as provided herein, this Agreement shall be null
6 and void *ab initio* (with the exception of this Section 4.9) and any decision or order by the Court
7 in furtherance of this Settlement shall be treated as withdrawn or vacated by stipulation of the
8 Parties. In such case, the Parties shall be returned to their respective statuses as of May 23, 2022.

9 **5. RELEASE AND WAIVER OF CLAIMS**

10 **5.1 PAGA Release.** Effective upon the Effective Date and conditional on the
11 remittance of the Settlement Fund Amount as set forth in Section 4.6.1, above, the State of
12 California and all PAGA Group Members (including Plaintiff) shall be deemed to have, and by
13 operation of the Judgment shall have, expressly released, waived, and discharged the Released
14 Parties from any and all claims, debts, liabilities, demands, obligations, guarantees, costs,
15 expenses, attorneys' fees, damages, action or causes of action of any nature under any state,
16 federal or local law that were or could have been asserted based on the facts and allegations made
17 in the Action, and any amendments thereto, including without limitation to claims under
18 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1997.1, 1198,
19 2802, Bus. & Prof. Code § 17200, California Industrial Commission Wage Orders, and including
20 all claims for or related to alleged unpaid wages, overtime or double time wages, minimum
21 wages, meal periods and meal period premiums, rest periods and rest period premiums, off-the-
22 clock work, inaccurate wage statements, payroll records and record keeping, unfair competition,
23 unfair business practices, unlawful business practices, representative actions, aggrieved party
24 claims, injunctive relief, declaratory relief, accounting, punitive damages, liquidated damages,
25 penalties of any nature (including but not limited to civil penalties, waiting time penalties, and
26 PAGA penalties), interest fees, costs, as well as all other claims and allegations alleged in the
27 Action, during the PAGA Period, and they shall be bound by the Approval Order and Judgment
28

1 and be forever barred from pursuing any of the Released Claims against any of the Released
2 Parties.

3 **5.2 Plaintiff's General Release.** In addition to his release of the Released Parties
4 from the Released Claims as set forth in Section 5.1, above, effective upon the Effective Date and
5 remittance of the Settlement Fund Amount, Plaintiff hereby expressly releases and waives any
6 and all claims, demands, rights, liabilities, and causes of action he has or has ever had against any
7 of the Released Parties, whether for economic damages, noneconomic damages, exemplary
8 damages, penalties, restitution, injunctive or declaratory relief, interest, attorneys' fees, costs, or
9 any other form of monetary or non-monetary relief in any way arising out of or relating to any
10 facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or
11 failures to act at any time up to and including the Approval Date, including but not limited to any
12 claims arising from or related to his employment. This general release by Plaintiff includes all
13 statutory claims, common law claims (including but not limited to those sounding in contract,
14 tort, and equity), and claims for compensation to the fullest extent permitted by law, including
15 without limitation, any and all claims under California Labor Code §§ 201, 202, 203, 204, 226,
16 226.7, 510, 512, 1194, 1197, 1997.1, 1198, 2802, Bus. & Prof. Code § 17200, California
17 Industrial Commission Wage Orders, and including all claims for or related to alleged unpaid
18 wages, overtime or double time wages, minimum wages, meal periods and meal period
19 premiums, rest periods and rest period premiums, off-the-clock work, wage statements, payroll
20 records and record keeping, unfair competition, unfair business practices, unlawful business
21 practices, representative actions, aggrieved party claims, injunctive relief, declaratory relief,
22 accounting, punitive damages, liquidated damages, penalties of any nature, interest fees, costs, as
23 well as all other claims and allegations alleged in the Action, during Plaintiff's employment with
24 Defendant.

25 **5.3 Waiver of Civil Code Section 1542.** Plaintiff, for himself only, acknowledges
26 that his general release herein includes potential claims and costs that may not be known or
27 suspected by him to exist, and he hereby expressly and affirmatively waives and relinquishes any
28 and all rights and benefits that he may otherwise have relating to the claims released in

1 Section 5.2, above, pursuant to Civil Code section 1542 and any similar law of any state or
2 territory of the United States. Civil Code section 1542 states as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
4 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
5 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
6 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
7 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
8 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
9 OR RELEASED PARTY.

7 **6. ADDITIONAL PROVISIONS**

8 6.1 **No Admission of Liability.** Defendant contends that all of its employment
9 practices comply and at all times have complied with applicable law, including California Labor
10 Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1997.1, 1198, 2802, Bus. & Prof.
11 Code § 17200, and the applicable California Industrial Commission Wage Orders. Defendant
12 denies any wrongdoing or liability arising out of any of the facts or conduct alleged in the Action
13 and contends that all of Plaintiff's claims and allegations lack merit and Defendant has valid
14 defenses to each of them. This Agreement reflects the compromise and settlement of disputed
15 claims between the Parties, and its provisions and any and all drafts, communications, or
16 discussions relating thereto do not constitute, are not intended to constitute, and will not under
17 any circumstances be deemed to constitute an admission by Defendant as to the merits, validity,
18 or accuracy of any of the allegations or claims in the Action, nor a waiver of any defense.

19 6.2 **Parties Represented by Counsel.** The Parties hereby acknowledge that they have
20 been represented in negotiations for and in the preparation of this Agreement by independent
21 counsel of their own choosing, they have read this Agreement and have had it fully explained to
22 them by such counsel, and they are fully aware of the contents of this Agreement and of its legal
23 effect.

24 6.3 **Voluntary Agreement.** This Agreement is executed voluntarily and without
25 duress or undue influence on the part of or on behalf of either Party, or of any other person, firm,
26 or entity. Each Party has made such investigation of the facts pertaining to this Agreement and of
27 all other matters pertaining hereto as he or it deems necessary.
28

1 **6.4 No Public Comment.** Unless they first obtain Defendant's express written
2 consent, Plaintiff's Counsel and Plaintiff shall not (a) discuss, reveal, disclose, publicize, or
3 promote the terms of this Settlement, or the negotiations leading to this Settlement, to any third
4 party (including but not limited to the media, the legal community, or the public at large), or
5 (b) issue any press releases or initiate any contact with the media regarding the Settlement, or
6 otherwise advertise or publicize the Settlement. Nothing in this Agreement is intended to prevent
7 Plaintiff's Counsel from disclosing or discussing the terms of this Settlement (i) with the Court,
8 the Settlement Administrator, or PAGA Group Members, (ii) in court filings to establish
9 adequacy of counsel or for purposes of seeking court approval of wage and hour settlements, or
10 (iii) as otherwise required by law.

11 **6.5 Authorization.** The Parties hereto represent and warrant that each signatory
12 hereto has the full right and authority to enter into this Agreement and bind the Party on whose
13 behalf he or it has executed this Agreement.

14 **6.6 Agreement Binding on Successors in Interest.** This Agreement shall be binding
15 on and inure to the benefit of the respective successors, assigns, heirs, and personal
16 representatives of the Parties.

17 **6.7 Mutual Full Cooperation.** The Parties agree to cooperate fully with each other to
18 accomplish the terms of this Agreement, including but not limited to execution and delivery of
19 any and all additional papers, documents, and other assurances and taking such other action that
20 may be reasonably necessary to implement the terms of this Agreement. The Parties and their
21 counsel shall use their best efforts, including all efforts contemplated by this Agreement and any
22 other efforts that may become necessary by order of the Court, to effectuate this Agreement and
23 the terms set forth herein.

24 **6.8 Entire Agreement.** This Agreement contains the entire agreement between the
25 Parties and constitutes the complete, final, and exclusive embodiment of their agreement with
26 respect to the subject matter hereof. This Agreement is executed without reliance upon any
27 promise, representation, or warranty by either Party or any representative of a Party, other than
28 those expressly set forth herein.

1 6.9 **Headings.** The various headings used in this Agreement are solely for the
2 convenience of the Parties and shall not be used to interpret this Agreement.

3 6.10 **No Construction Against Drafter.** This Agreement shall be deemed to have been
4 drafted jointly by the Parties, and any rule that a document shall be interpreted against the drafter
5 shall not apply to this Agreement.

6 6.11 **Amendment and Modification.** This Agreement may not be amended, altered, or
7 modified except in writing and signed by the Parties hereto, their successors in interest, or their
8 duly authorized representatives, and approved by the Court.

9 6.12 **Governing Law.** This Agreement is entered into in accordance with the laws of
10 the State of California and shall be governed by and interpreted in accordance with those laws.

11 6.13 **Jurisdiction of the Court.** Any dispute regarding the interpretation or validity or
12 otherwise arising out of this Agreement, or relating to the Action or the Released Claims, shall be
13 subject to the exclusive jurisdiction of the Court. The Parties intend this Agreement to be
14 enforceable pursuant to Code of Civil Procedure section 664.6. Following the entry of the
15 Judgment but without affecting the finality thereof, the Court shall retain jurisdiction solely with
16 respect to the interpretation, implementation, and enforcement of the terms of this Agreement and
17 all orders and judgments entered in connection therewith, and the Parties and their counsel shall
18 submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing
19 the Settlement embodied in this Agreement and all orders and judgments entered in connection
20 therewith.

21 6.14 **Agreement Constitutes a Complete Defense.** To the extent permitted by law,
22 this Agreement may be pleaded as a full and complete defense to any action, suit, or other
23 proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this
24 Agreement.

25 6.15 **Signatures.** Any signature made and transmitted by facsimile or electronically
26 (such as DocuSign) or by a Portable Document Format (“PDF”) attachment to an email shall have
27 the same force and effect as original signatures.
28

1 6.16 **Execution Date and Execution in Counterparts.** This Agreement shall be
2 deemed executed upon the last date of signature of all of the undersigned. The Parties may
3 execute this Agreement in counterparts, each of which shall constitute an original, but all of
4 which together shall constitute one and the same instrument having the same force and effect as if
5 all Parties had signed the same instrument.

6 IN WITNESS WHEREOF, the Parties hereto have so agreed.

7 Dated: October 24, 2023

MICHAEL GUILLEN

8
9 
10 Michael Guillen (Oct 24, 2023 13:36 PDT)

On behalf of himself, the State of California,
and all PAGA Group Members

11 Dated: October 23, 2023

12 CONCORD AUTOMOTIVE SALES AND
13 SERVICE, INC.

14 By: 
15 Monica Desanjh

16 APPROVED AS TO FORM:

EMRAN LAW FIRM

17 Dated: October 24, 2023

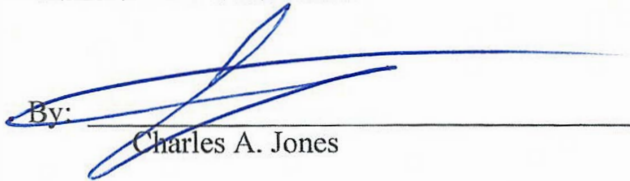
18 By: 
19 Harris Emran

20 Attorneys for Plaintiff
MICHAEL GUILLEN

21 APPROVED AS TO FORM:

JONES LAW FIRM LLC

22 Dated: October 24, 2023

23 By: 
24 Charles A. Jones

25 Attorneys for Defendant
26 CONCORD AUTOMOTIVE SALES AND
27 SERVICE, INC.
28

EXHIBIT A

1 CAPTION

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9 The motion of plaintiff Michael Guillen for an order approving the settlement of the
10 above-captioned action and entering judgment thereon (“Motion”) having come before the Court,
11 and the Court being duly apprised of the premises, good cause appearing,

12 IT IS HEREBY ORDERED that the Motion shall be and is granted and the settlement of
13 this action is hereby approved, and

14 IT IS FURTHER ORDERED as follows:

15 1. Capitalized terms in this Approval Order shall have the same meaning they are
16 given in the Settlement Agreement attached as Exhibit [X] to the Declaration of [PLAINTIFF’S
17 COUNSEL] filed in support of the Motion;

18
19 2. Phoenix Settlement Administrators is approved to serve as the Settlement
20 Administrator and is hereby authorized to perform all of the duties assigned to it in the Settlement
21 Agreement and to disburse the following from the Settlement Fund Amount in accordance with
22 the terms of the Settlement Agreement:

23
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28 EXHIBIT A

- 1 a. The LWDA Payment in the amount of \$ _____;
- 2 b. The Settlement Payments to PAGA Group Members in the
- 3 aggregate amount of \$ _____;
- 4 c. The Fee and Expense Award in the amount of \$ _____;
- 5 d. The General Release Payment in the amount of \$ _____;
- 6 and
- 7 e. The Settlement Administration Costs in the amount of
- 8 \$ _____.

9 3. The State of California and all PAGA Group Members (including Plaintiff) are

10 hereby deemed to have, and by operation of this Approval Order and Judgment shall have,

11 expressly released, waived, and discharged the Released Parties from the Released Claims, and

12 they shall be bound by this Approval Order and Judgment and be forever barred from suing the

13 Released Parties on any of the Released Claims.

14 4. Judgment shall be entered forthwith in accordance with the foregoing, with each

15 side to pay his or its own attorneys' fees and costs except as expressly set forth in the Settlement

16 Agreement.

17 IT IS SO ORDERED, ADJUDGED AND DECREED.

18 Dated: _____, 2023

19 _____

20 Honorable _____

21 Judge of the Superior Court

22

23

24

25

26

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28 **EXHIBIT A**

EXHIBIT B

NOTICE OF SETTLEMENT

Enclosed is a check representing your share of the proceeds of the settlement of a lawsuit brought against Concord Automotive Sales and Services Inc. by a former employee, entitled *Michael Guillen v. Concord Automotive Sales and Services, Inc.*, Contra Costa County Superior Court Case No. C23-01333 (the “Action”). The Action alleged a claim under California’s Private Attorneys General Act, Cal. Lab. Code, § 2698, et seq., for alleged violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1997.1, 1198, 2802, Bus. & Prof. Code § 17200, and the applicable California Industrial Commission Wage Order.

The action is now settled. Your payment was calculated based on the total number of pay periods you worked in a for Defendant during the period from March 22, 2002 to [APPROVAL DATE], multiplied by the per pay period value derived from the settlement. The settlement has been approved by the Court and no further action is required on your part. You should cash or negotiate your check by [180 DAYS AFTER ISSUANCE], after which the check will be void and you will no longer be able to share in the settlement. You will be bound by the settlement regardless of whether you cash your check. If you have questions about the settlement, you may call the settlement administrator, [NAME] at [TOLL-FREE NUMBER].

Please do not contact the Court regarding this notice.

EXHIBIT E

Activities Export

11/02/2023
5:04 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
07/26/2023	\$	Filing re: Stip & Proposed Order (One Legal) ● Unbilled	Michael Guillen Employment	Shivanjali Naicker	1.00	\$17.04	-	\$17.04
06/13/2023	\$	Process Server Fee (Complaint) ● Unbilled	Michael Guillen Employment	Shivanjali Naicker	1.00	\$95.00	-	\$95.00
06/01/2023	\$	Filing Fee re: Complaint & Supp Docs (OneLegal) ● Unbilled	Michael Guillen Employment	Shivanjali Naicker	1.00	\$451.21	-	\$451.21
							\$0.00 0.00h	\$563.25 0.00h