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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

YADIRA GONZALEZ, as an individual and on behalf of all employees similarly situated, Plaintiff, v. RV RETAILER SAN DIEGO, LLC, a Limited Liability Company; RV RETAILER, LLC, a Limited Liability Company; BLUE COMPASS RV, LLC, a Limited Liability Company; and DOES 1 through 50, inclusive, Defendants.	Case No.: CVRI2301403 [Assigned for all purposes to Hon. Harold W. Hopp, Dept. 1] **[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT OF 2004** Reservation N: 054779068314 Date: January 31, 2024 Time: 8:30a.m. Courtroom: Dept. 1 Judge: Hon. Harold W. Hopp Action Filed: March 16, 2023 Trial Date: Not Set

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

Plaintiff YADIRA GONZALEZ(“Plaintiff”) and Defendants RV RETAILER SAN DIEGO, LLC; RV RETAILER, LLC; and BLUE COMPASS RV, LLC (“Defendants”) (Plaintiff and Defendants are the “Parties”) have reached terms of settlement of this action alleging a claim for relief pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq*. (“PAGA”).

Pursuant to PAGA, Plaintiff, on behalf of the Parties, has filed a motion for approval of the settlement of the claims asserted against Defendants in this action. Specifically, Plaintiff moves for an order:

1. granting approval of the terms of the Agreement pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq*., including the amount of the settlement; the amount of distributions to the State and Aggrieved Employees; the amounts allocated to attorney’s fees and costs; the amount allocated to General Release Payment to Plaintiff; and the amount allocated to the settlement administrator; and,
2. directing disbursement of the Gross Settlement Amount pursuant to the terms of the Agreement.

The PRIVATE ATTORNEYS GENERAL ACT AMENDED SETTLEMENT AGREEMENT AND RELEASE (referred to as the “Agreement,” or “Settlement,” and attached to the Declaration of Lilit Tunyan as Exhibit 1) is conditioned upon the Court’s approval. Capitalized terms in this Order have the same meaning as in the Settlement unless indicated otherwise. A summary of the terms of the Settlement is as follows:

(a) The Aggrieved Employees: The Aggrieved Employees (also known as the “PAGA Members”) are: “All non-exempt employees who are or were employed by Defendants within the State of California from March 15, 2022, to August 17, 2023.” It is estimated that there are approximately 3,800 pay periods. (Agreement, ¶ 8.)

(b) No Reversion: The Settlement is non-reversionary. (Agreement, ¶ 5.)

(c) Gross Settlement Amount: Defendants agree to pay the maximum sum of $99,500.00 (hereinafter referred to as the “Gross Settlement Amount” or “GSA”) for settlement of the PAGA Penalties, which shall be inclusive of Plaintiff's Counsel's attorney's fees and costs and the settlement administrator's fees and costs. (Agreement, ¶ 5.)

(d) Net Settlement Amount: At least $50,415.96 will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least $37,811.97 under the Agreement, and Aggrieved Employees will receive at least $12,603.99. (Agreement, ¶ 5.c.)

(e) Attorney's Fees: Plaintiff's Counsel request an award of attorney's fees in the amount of $33,166.67, which is one third of the GSA. (Agreement, ¶ 5.a.)

(f) Litigation Costs: Plaintiff's Counsel's litigation costs are capped to a maximum amount of $16,000. Those actual costs are $12,667.37 which include the motion re-filing fees. Therefore, $12,667.37 is requested, by Plaintiff. (Agreement, ¶¶ 5.a, 11.b.)

(g) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator ILYM Group, Inc., which has agreed to perform Administrator duties for a flat fee not to exceed $3,250.00, which is reasonable, based on all of the services offered. (Agreement, ¶ 12)

(h) General Release by Plaintiff: The Parties have entered into a separate settlement and release agreement for the general release of Plaintiff's individual claims against Defendants and for representing all Aggrieved Employees. Upon approval of this PAGA settlement Plaintiff will receive $5,000.00 as a consideration for representing all Aggrieved Employees and general release of her claims which shall be paid by Defendants in addition to the GSA. (Agreement, ¶¶ 2, 11.b.)

(i) Uncashed Checks: Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be redistributed to those Aggrieved Employees who have already cashed their checks based on their pro rata share of the PAGA penalties. (Agreement, ¶ 11.c.)

(j) Release: In exchange for the above settlement consideration, Defendants shall be entitled to a release from the LWDA and each and every Aggrieved Employee, including Plaintiff. (Agreement, ¶ 2.)

(k) Tax Allocation: The Settlement Payments to Aggrieved Employees are classified as other miscellaneous income and will be allocated as 100% penalties, which will be reported on IRS Form 1099-MISC, if required. (Agreement, ¶ 9.)

(l) No Right to Opt-out: There is no statutory right for any Aggrieved Employee to object, opt out or otherwise exclude themselves from the Settlement. (Agreement, ¶ 4.)

(m) Notice to LWDA: The Declaration of Lilit Tunyan confirms that notice was provided to the LWDA and attaches the confirmatory submission documents. (Declaration of Lilit Tunyan, hereinafter "Tunyan Decl.", ¶ 49 and Exh. 3.)

After reviewing the Settlement and other related documents, and the filings submitted by Plaintiff, **IT IS HEREBY ORDERED AS FOLLOWS**:

1. The Court hereby GRANTS approval of the PAGA settlement upon the terms and conditions set forth in the Settlement attached as Exhibit 1 to the Declaration of Lilit Tunyan. The Court finds that the terms of the proposed settlement are reasonable. In granting approval of the settlement the Court has considered the factors identified in *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18, 2016), *Hanlon v. Chrystler Corp*., 150 F.3d 1011 (9th Cir. 1998), *Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794 (1996), and other authority providing a coherent framework for evaluating this Settlement.

2. The Court hereby identifies the Aggrieved Employees as:

> All non-exempt employees who are or were employed by Defendants within the State of California from March 15, 2022 to August 17, 2023.

This Order incorporates by reference the definitions in the Settlement, and all capitalized terms defined therein shall have the same meaning in this Order as set forth in the Settlement.

3. The Court hereby finds the Settlement was the product of informed, non-collusive negotiations conducted at arms' length by the Parties. In making these findings, the Court considered Defendants' potential liability, the benefit to the State of California, allocation of settlement proceeds among Aggrieved Employees, and the fact that a settlement represents a compromise of the Parties' respective positions rather than the result of a finding of liability at trial. The Court further finds that the terms of the Settlement have no obvious deficiencies. The Court finds that the risks of further prosecution are substantial and include the risks that (1) penalties would be reduced after evaluation of the totality of the circumstances, or (2) that no penalties would be awarded for some or all of the alleged violations.

4. The Court hereby approves ILYM Group, Inc. to serve as the settlement administrator ("Settlement Administrator"). The Settlement Administrator will be paid pursuant to the Agreement's terms for such distribution, in the requested amount of **$3,250.00** out of the Gross Settlement Amount to effectuate Administration. Defendants will provide the Settlement Administrator with a list of Aggrieved Employees within 15 days from entry of this order that Defendants will compile from its records, which will include each Aggrieved Employee's last known full name, last known address, last known telephone number, Social Security number and employee ID number, start and end dates of employment as a non-exempt and/or hourly-paid employee of Defendants in California during the PAGA Period, and other such mutually agreed upon information by the Parties as may be necessary for the Settlement Administrator to independently calculate and review the Pay Periods attributed to each Aggrieved Employee, and the Settlement Administrator will calculate each Aggrieved Employee's estimated share of the twenty-five percent (25%) portion of the PAGA Payment. The Settlement Administrator will also establish Qualified Settlement Fund Escrow Account, prepare, administer, and distribute settlement checks to the Aggrieved Employees, including necessary tax forms (W2 and/or 1099), calculate and withhold all applicable state and federal taxes, should any disbursements be returned to ILYM Group's office as undeliverable, ILYM Group will attempt to locate an update address using the NCOA database and/or other skip trace efforts and will promptly remail the disbursement, redistribute all uncashed checks to those aggrieved employees' who had previously cashed their settlement checks, perform any

other usual and customary duties for administering a PAGA action settlement.

5. Pursuant to the Agreement, the amount distributed as penalties under PAGA shall be **$99,500.00**, less administration costs, attorney's fees, and costs awarded to Plaintiff's counsel. After awards, the amount remaining to distribute as penalties is **$50,415.96**. The LWDA shall receive 75% of the penalties allocated, which is **$37,811.97**. Aggrieved Employees shall receive 25% of the penalties allocated, which is **$12,603.99**.

6. The Court hereby awards Counsel attorneys' fees in the amount of **$33,166.67**. The Court finds that the attorneys' fees are reasonable compared to amounts routinely approved in similar settlements and as guided by the California Supreme Court's decision concerning the awarding of fees from monetary funds for class members. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016). Counsel proceeded on a contingency basis despite the uncertainty of any fee award. Counsel were necessarily precluded from pursuing other potential sources of fees because of work in connection with this Action. The Court observed that this is not a class action. It is more akin to contingent representation with an additional requirement of Court review due to the qui tam nature of a PAGA claim. Attorneys' fees that are fifty percent of a common fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. *See Van Vranken v. Atlantic Richfield Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million). Based on these considerations, including the lodestar cross-check, a fee award of one third of the total settlement amount is reasonable.

7. The Court hereby awards Counsel litigation costs in the total amount of **$12,667.37.**

8. The Court hereby awards Plaintiff General Release Payment in the total amount of **$5,000.00.**

9. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on the provisions and timelines set forth in the Agreement.

10. The Court approves, both as to form and content, the Notice of PAGA settlement to Aggrieved Employees attached hereto as **Exhibit 1.**

11. Pursuant to the terms of the Settlement, the released persons and entities include

Defendants (as defined above) and all of their current and former officers, directors, employees and agents (referred to in the Settlement as the "Released Parties").

12. Upon entry of the Order approving this Settlement and the Judgment thereon, PAGA claims are released as follows:

> The Parties agree and acknowledge that, to the maximum extent permitted by law, the final judgment entered pursuant to this settlement will bind all those who would be bound by a judgment if the action had been brought by the LWDA, including Plaintiff, the LWDA, and the Aggrieved Employees, with respect to the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et. seq*. only, against the Released Parties. It is expressly understood and agreed that this settlement only includes a full release of the PAGA claims that could have been sought by the State of California Labor Commissioner for the violations identified in Plaintiff's pre-filing notice letter as well as amended notice letter filed with the LWDA and attached as Exhibit A to the Settlement Agreement upon the Effective Date and full funding of the Gross Settlement amount.[1] With the exception of Plaintiff, who will execute an individual settlement that includes a general release of all claims, this settlement shall not impact aggrieved employees' ability to assert claims (claims for wages and other damages) other than the PAGA claims being released by this Settlement. Plaintiff does not release any aggrieved employee's claim for wages or damages. Pursuant to the separate individual settlement agreement entered between Defendants and Plaintiff for general release of Plaintiff's all claims and for representing all Aggrieved Employees Plaintiff shall receive Five Thousand Dollars and Zero Cents ($5,000.00) as a general release payment ("General Release Payment"). The Gross Settlement Amount does not include the General Release Payment to Plaintiff.

13. The action is DISMISSED WITH PREJUDICE.

14. The Court will enter Final Judgment in accordance with this Order.

15. Final Accounting (Nonappearance) Hearing is set on ------------------------2024. Plaintiff is to file a report concerning the amount of money distributed and/or uncashed seven (7) days before the Final Accounting (Nonappearance) Hearing.

16. The Court shall retain jurisdiction with respect to all matters related to the administration and consummation of the Settlement, and any and all claims asserted in, arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the determination of all controversies relating thereto.

IT IS SO ORDERED.

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[1] The effective date ("Effective Date") of the Agreement shall mean the date of entry of the order of the court approving this Agreement and the PAGA Settlement.

Dated: ________________________ ____

Hon. Harold W. Hopp
RIVERSIDE COUNTY SUPERIOR COURT JUDGE

Exhibit “1”

NOTICE OF PAGA ACTION SETTLEMENT

Yadira Gonzalez v. RV Retailer San Diego, LLC, et al., Riverside County Superior Court
Case No. CVRI2301403

This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE EMPLOYED AS A NON-EXEMPT EMPLOYEE BY DEFENDANTS RV RETAILER SAN DIEGO, LLC; and BLUE COMPASS RV, LLC f/k/a RV RETAILER, LLC ("DEFENDANTS") DURING THE PAGA PERIOD (MARCH 15, 2022 through AUGUST 17, 2023), THIS PAGA SETTLEMENT AFFECTS YOUR RIGHTS.

A settlement (the "Settlement") has been reached in the lawsuit entitled *Yadira Gonzalez v. RV Retailer San Diego, LLC, et al*., Case No. CVRI2301403 (the "Action"), asserting claims under the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq*. ("PAGA"). The purpose of this Notice is to advise you as to why you have received a portion of the Settlement proceeds. The Settlement resolves the Action.

Who is affected by this proposed Settlement?

The Court has designated, for settlement purposes only, the following persons as "Aggrieved Employees" or "PAGA Group Members":

All non-exempt employees employed by Defendants in California at any time during the PAGA Period (the "PAGA Period" refers to the period of March 15, 2022 to August 17, 2023).

According to Defendants' records, you are one of the Aggrieved Employees or PAGA Group members.

What is this case about?

In the Action, Plaintiff Yadira Gonzalez asserted claims that Defendants violated provisions of the Labor Code giving rise to civil penalty liability under the Labor Code Private Attorneys General Act of 2004 ("PAGA") [Lab. Code § 2699, *et seq*.].

Defendants denied all liability and were confident that they had strong legal and factual defenses to these claims, but Defendants recognized the risks, distractions, and costs associated with continued litigation.

This Settlement is a compromise reached after good faith, arm's length negotiations between Plaintiff and Defendants (the "Parties"), through their attorneys, and is not an admission of liability on the part of Defendants.

The Court has not ruled on the merits of Plaintiff's claims or Defendants' defenses but did approve the Settlement. The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendants that the claims in the Action have merit or that Defendants have any liability to Plaintiff or PAGA Group Members. Plaintiff and Defendants, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests PAGA Group Members. The Court has made no ruling on the merits of the claims asserted in the Action and has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable.

What are the Settlement terms?

Defendants will pay **$99,500.00** (the "Gross Settlement Amount") for: (a) payment of **$---------** to the Labor and Workforce Development Agency ("LWDA") as its 75% share of PAGA penalties; (b) payment of **$----------** to Aggrieved Employees as their 25% share of PAGA penalties, (c) payment of attorney's fees of **$---** and litigation costs of **$---**; and, (d) payment of administration costs of **$-------** to the Settlement Administrator. Plaintiff as a PAGA Group representative will receive a **$5,000.00** general release payment for representing PAGA Group Members and for general release of all claims against Defendants which is not included in the Gross Settlement Amount.

By operation of the Settlement's terms, upon the approval of this Settlement by the Court and full funding of the Gross Settlement Amount, all Aggrieved Employees will release Defendants and all of their current and former officers, directors, employees and agents (collectively, the "Released Parties") from the PAGA claims for civil penalties based on alleged violations of California Labor Code violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2698, 2802, 6409.6. The Settlement includes a release of PAGA claims that could have been sought by the State of California Labor Commissioner for the violations identified in Plaintiff's pre-filing notice letter as well as amended notice letter filed with the LWDA (the "Released Claims").

All settlement checks mailed to Aggrieved Employees will remain valid and negotiable for one hundred eighty (180) calendar days from the date of the checks' issuance and shall thereafter automatically be void if not cashed within that time. After 180 calendar days, all uncashed checks shall be redistributed to those Aggrieved Employees who have already cashed their checks based on their pro rata share of the PAGA penalties. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement. If the Court grants final approval of the Settlement, Individual PAGA Payments will be mailed to PAGA Group Members at the address that is on file with the Settlement Administrator. If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.

What is the Settlement Formula and My Estimated Settlement Share?

You shall receive a portion of the PAGA Penalties on a pro-rata basis. Defendants will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the PAGA Period, and (ii) the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. To determine each Aggrieved Employee's payment from the Aggrieved Employees' PAGA Portion, Defendants will use the following formula: Settlement Payment = Aggrieved Employees' PAGA Portion × [Pay Periods Worked by Individual Aggrieved Employee during the PAGA Period ÷ Total Pay Periods Worked by All Aggrieved Employees during the PAGA Period].

The estimated average Individual PAGA Payment is approximately: $[estimated average Individual Payment]
The estimated highest Individual PAGA Payment is approximately: $[estimated average Individual Payment]
The estimated lowest Individual PAGA Payment is approximately: $[estimated average Individual Payment]

The Settlement Payments to Aggrieved Employees are classified as other miscellaneous income and will be allocated as 100% penalties, which will be reported on IRS Form 1099-MISC, if required[1]. Your share was calculated based on the number of pay periods you worked for Defendants during the PAGA Period.

According to Defendants' records from March 15, 2022 to August 17, 2023 (i.e., the PAGA Period), your estimated number of pay periods worked is [_____] pay periods.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be $___________.

There is no statutory right for PAGA Group Members to object, opt out or otherwise exclude themselves from this Settlement.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

[1] One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered penalties, and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences, if any, of your Individual PAGA payment. Neither Plaintiff nor Defendants have made any representations or warranties regarding the taxation of your Individual PAGA payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).