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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]

**DECLARATION OF LILIT TUNYAN IN
SUPPORT OF 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

Date: January 31, 2023

I, LILIT TUNYAN, declare as follows:

2. This Declaration is submitted in support of Plaintiff’s MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”).

Case Management Order Section D(1) (b)

4. Defendants are companies providing RV dealership services in three locations in California.

6. Plaintiff worked for Defendants in California during the PAGA Period.

DECLARATION OF LILIT TUNYAN IN SUPPORT OF PLAINTIFF'S MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT OF 2004

1 amended letter to the LWDA on behalf of Plaintiff, in compliance with California Labor Code § 2699.3.
2 More than 65 days passed after the letters were sent to the LWDA, and the LWDA did not indicate that it
3 intended to investigate the alleged violations referenced in the letter sent by Plaintiff.

4 8. On March 16, 2023, Plaintiff filed a class action complaint (“Complaint”) in the Superior
5 Court of California, Riverside County entitled *Yadira Gonzalez v. RV Retailer San Diego, LLC, et al*,
6 Case No. CVRI2301403. On May 22, 2023, Plaintiff filed her First Amended Complaint adding a case
7 of action for civil penalties under PAGA. Due to an enforceable arbitration agreement, Plaintiff
8 subsequently requested dismissal of causes of action one through seven, leaving only the PAGA claim.
9 On October 9, 2023, the parties filed a joint stipulation seeking leave of the court to file a Second
10 Amended Complaint adding an allegation and claim for failure to provide notice of a potential COVID-
11 19 workplace exposure under California Labor Code Section 6409.6 which was granted on October 10,
12 2023. On October 11, 2023, Plaintiff filed her Second Amended Complaint alleging one cause of action
13 for civil penalties under PAGA adding an allegation and claim for failure to provide notice of a potential
14 COVID-19 workplace exposure under California Labor Code Section 6409.6.

15 9. Defendants deny all liability and admit to no claim by virtue of its agreement to settle.
16 Defendants contend they had lawful policies, including break and pay policies, in effect throughout the
17 statutory period, and legal defenses to a substantial portion of the alleged penalty claims. Plaintiff and
18 Plaintiff’s Counsel have also taken into account the uncertainty and risk of the outcome of further
19 litigation, and the difficulties and delays inherent in such litigation, including those involved in PAGA
20 claim representative adjudication. Plaintiff and Plaintiff’s Counsel further recognize the burdens of proof
21 necessary to establish liability for the claims asserted in the lawsuit, Defendants’ defenses, and the
22 difficulties in establishing entitlement to monetary recovery. Plaintiff and Plaintiff’s Counsel have also
23 considered the Parties’ settlement discussions, as well as the evaluations of the mediator, who is
24 experienced and well-regarded in complex labor and employment matters.

25 10. Because Court approval of a PAGA settlement is required, this settlement is presented to this
26 Court for review and approval.

27 11. Counsel for Plaintiff has thoroughly investigated the facts relating to the claims alleged in the
28 operative complaint and have made a thorough study of the legal principles applicable to the claims

1 asserted against Defendants. Based on their investigation and evaluation of this case, Plaintiff's Counsel
2 have concluded that the settlement is fair, reasonable, and adequate in light of all known facts and
3 circumstances, including the defenses asserted by Defendants, potential adverse findings regarding
4 liability, and numerous potential appellate issues.

5 12. The Parties agreed to participate in a mediation in an effort to resolve the PAGA claims
6 asserted in this matter. The Parties selected mediator Michael Young, Esq., a neutral with extensive
7 experience mediating wage and hour class and representative actions. Prior to the mediation, Plaintiff
8 requested substantial data from Defendants, and Defendants provided the requested data. Prior to and
9 during the mediation and settlement discussions, the Parties exchanged extensive information and
10 engaged in discussions regarding their evaluations of the case and various aspects of the case, including
11 but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with
12 representative adjudication, the law relating to off-the-clock theory, meal and rest periods, and wage-and-
13 hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals,
14 among other things. Plaintiff's Counsel conducted significant investigation and informal discovery
15 regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large
16 volume of documents and data obtained from Defendants, Plaintiff, and other sources. The volume of
17 data and documents that Plaintiff's Counsel reviewed and analyzed included and was not limited to:
18 Plaintiff and Aggrieved Employees' employment records, a detailed sampling of Aggrieved Employees'
19 time and pay data, Defendants' Employee Handbook, Confidentiality and Disclosure Agreement,
20 Arbitration Agreement, Confidentiality and Non-Solicitation Agreement, 401K Plan terms,
21 acknowledgments, agreements and forms, and employment practices, procedures, and policies including,
22 but not limited to Defendants' expenses policy, meal and rest periods policy, work time policy, overtime
23 policy, pay periods and pay days policy, among other information and documents. Counsel for the
24 Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the production of
25 documents and data prior to the mediation. Plaintiff's Counsel also drafted the pleading and the
26 mediation brief and prepared for and attended court proceedings, mediation, and settlement negotiations,
27 among other tasks.

28 13. Counsel for the Parties have also invested time researching and investigating the applicable

1 law, which is constantly evolving as it relates to representative PAGA claims, off-the-clock theory, meal
2 and rest periods, wage-and-hour law and enforcement, Plaintiff's claims and damages, and Defendant's
3 defenses thereto, as well as facts discovered.

4 14. Based on Plaintiff's Counsel's analysis, the result achieved in this litigation is fair, adequate,
5 and reasonable. Based on investigation and information discovered, Plaintiff's Counsel believes that
6 there is sufficient evidence to support the allegations made in the lawsuit, including the allegations that
7 Defendants, with respect to Plaintiff and the Aggrieved Employees, *inter alia*, failed to properly pay
8 overtime wages, failed to provide compliant meal and rest periods and to pay associated premium pay,
9 failed to timely pay wages during employment and upon termination of employment, failed to provide
10 compliant wage statements, failed to maintain requisite payroll records, and failed to reimburse necessary
11 business expenses, and thereby engaged in conduct giving rise to civil penalties recoverable under the
12 Private Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.). Plaintiff also
13 asserted that Aggrieved Employees were expected to perform similar job duties and were subject to the
14 same or similar operations and employment policies, practices, and procedures. Additionally, Plaintiff
15 asserted that Defendants' recordkeeping practices with respect to Plaintiff and Aggrieved Employees
16 were substantially the same during the time period at issue. As a result of said alleged uniform practices,
17 Plaintiff claims that Aggrieved Employees were not paid all of the compensation that was owed to them
18 by Defendants. Thus, in Plaintiff's Counsel's view, it is clear that the outcome of this litigation would be
19 determined by Defendants' uniform operations and employment practices, policies, and procedures that
20 Plaintiff alleges applied across Defendants' hourly-paid or non-exempt employees in California during
21 the PAGA period.

22 15. The Parties participated in a full-day mediation on August 17, 2023, reaching a settlement at
23 that time. The Parties then spent many weeks thereafter negotiating the detailed terms of the Settlement
24 memorialized in a long-form agreement to resolve this matter.

25 26 SUMMARY OF THE SETTLEMENT TERMS

27 Case Management Order Section D(7) (a)-(d)

28 16. Key provisions of the proposed settlement include the following:

- (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 Settlement 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

1 against Defendants and for representing all Aggrieved Employees. Upon
2 approval of this PAGA settlement Plaintiff will receive **\$5,000.00** as a
3 consideration for representing all Aggrieved Employees and general release of
4 her claims which shall be paid by Defendants in addition to the GSA.

5 (Agreement, ¶¶ 2, 11.b.)

6 (i) Uncashed Checks: Funds represented by checks returned as undeliverable after a
7 re-mailing, and funds represented by checks remaining un-cashed for more than
8 180 days after issuance, will be redistributed to those Aggrieved Employees who
9 have already cashed their checks based on their pro rata share of the PAGA
10 penalties. (Agreement, ¶ 11.c.)

11 (j) Release: In exchange for the above settlement consideration, Defendants shall be
12 entitled to a release from the LWDA and each and every Aggrieved Employee,
13 including Plaintiff.¹ (Agreement, ¶ 2.)

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

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

21 (m) Notice to LWDA: The Declaration of Lilit Tunyan confirms that notice was
22 provided to the LWDA and attaches the confirmatory submission documents.
23 **(Exhibit “3”)**

24 17. A true and correct copy of the PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
25 AGREEMENT AND RELEASE is attached hereto as **Exhibit “1.”**

26
27 ¹ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46
28 Cal. 4th 969, 986 (2009) (concluding that “with respect to the recovery of civil penalties, nonparty
employees as well as the government are bound by the judgment in an action brought under the act....”).

1 THE SETTLEMENT MEETS ALL THE CRITERIA FOR APPROVAL

2 Case Management Order Section D(2) (f)

3 18. Plaintiff and Plaintiff's counsel have diligently investigated the claim in this matter. Plaintiff
4 and Counsel concluded, after taking into account the disputed factual and legal issues involved in this
5 Action, the substantial risks attending further prosecution, including risks related to the outcome of
6 possible summary judgment efforts, and the substantial benefits to be received pursuant to the
7 compromise and settlement of the Action as set forth in the Settlement, that settlement on the terms
8 agreed to are in the best interest of Plaintiff and the Aggrieved Employees and are fair and reasonable.
9 Plaintiff's and Defendants' Counsel brought to bear a great deal of experience with wage and hour
10 actions in negotiating the settlement of this case.

11 19. Resolution at this time will forestall the need for additional expensive and time-consuming
12 litigation that could very well result in an outcome less satisfactory than that proposed under this
13 settlement. But, before any other consideration, we have agreed to this settlement because it is
14 objectively reasonable. The potential for resolution benefits the aggrieved employees and the State of
15 California, since they do not have to wait additional years for a similar recovery. The efficiency of this
16 litigation benefits the Court, the parties and their counsel. A settled resolution now is the most realistic
17 method for addressing the claims raised in this matter.

18 20. We have engaged in the necessary investigation in this case that made it possible for us to
19 exercise informed judgment in those aspects of the settlement process in which we were involved. The
20 Defendants in this matter produced important information, including policies and time data, and discloses
21 key legal defenses it intended to rely upon. The information, coupled with other data and aggrieved
22 employee interviews, was sufficient to permit Plaintiff's counsel to adequately evaluate the settlement.
23 Plaintiff had more than enough information upon which to evaluate a fair and reasonable settlement
24 amount.

25 21. Here, the expense, complexity and likely duration of future litigation was to some extent an
26 unknown. However, what is certain is that to adequately establish the foundational violations that would
27 support a substantial penalty award, tremendous time and expense would be invested. To adequately
28 establish that aggrieved employees experience the alleged violations, and at what frequency, most of the

1 aggrieved employees would need to be interviewed in a systematic fashion and their testimony cataloged
2 in way sufficiently meaningful to permit the submission of summary evidence at trial, such as via survey.
3 *First*, the burdensome nature of such a process would be expensive and time-consuming. *Second*, the
4 review of the provided by Defendants' data and individuals already interviewed confirmed substantial
5 risk that the Court would either substantially reduce any penalty ultimately awarded *or* conclude that the
6 conduct was insufficient to support a penalty award. *Third*, it would be essentially impossible to
7 formulate an objectively reliable means of summarizing testimonial experiences, other than by an
8 extraordinarily detailed survey which would impose the risk of manageability. And formulating such a
9 survey would have been important, since frequency of violations would need to be established before any
10 penalties could be recovered. In sum, the evidence collected to date leads Plaintiff to conclude that, to
11 the extent violations occurred, a fact which Defendants dispute, the violations were **not** systematic and
12 **not** uniform across all of Defendants' estimated 146 employees who worked during the PAGA period.
13 Alternatively, direct testimony would have been required from as many of the roughly 146 aggrieved
14 employees as could be obtained, which would be, at best, very difficult.

15 NATURE OF THE CLAIMS AND ESTIMATE OF THE VALUE OF THE CLAIMS

16 Case Management Order Section D(2) (a)-(h)

17 22. Plaintiff contended that Defendants required Aggrieved Employees to perform work before
18 clocking-in and after clocking-out of their scheduled shifts and during meal and rest periods. Plaintiff
19 contended that Defendants discouraged the recordation of overtime hours and required Aggrieved
20 Employees to perform work off-the-clock. For example, Plaintiff contended that Defendants required
21 Plaintiff and Aggrieved Employees to work through their meal and rest periods by requiring them to
22 keep their cell phones turned on during meal and rest periods and to receive and respond to work-related
23 calls and text messages. Defendants also required Plaintiff and Aggrieved Employees to interrupt their
24 meal and rest periods and return to work as soon as they receive a call or a text message from their
25 supervisors. Plaintiff and Aggrieved Employees were also required to use their personal cellular
26 telephones for work purposes at home after their scheduled work time to communicate with Defendants
27 regarding their work schedule changes and work assignments. Plaintiff also contended that Plaintiff and
28 Aggrieved Employees from time to time were instructed to arrive earlier than their scheduled time by

1 supervisors to do additional work and/or to undergo COVID pre-screening at the entrance to Defendants’
2 facility prior to clocking in to work but Defendants refused to allow them to clock in earlier than five
3 minutes before the start of their shifts each workday. Specifically, Plaintiff and Aggrieved Employees
4 were required to arrive for work in time to begin at the scheduled time, but not so early to create overtime
5 unless it is preapproved by the supervisor. In addition, Plaintiff contended that Plaintiff and Aggrieved
6 Employees were required to clock out from work not later than five minutes after their scheduled end of
7 shifts. This requirement has also been incorporated in Defendants’ Employee handbook effective August
8 1, 2021 which states: “Clock in no more than five minutes ahead of scheduled start time and clock out no
9 later than five minutes after your scheduled quitting time, unless you have been instructed by a
10 supervisor to start work early or stop work late. In addition, Defendants’ Employee handbook states the
11 following ground for discipline: “Failure to work overtime when requested or working unauthorized
12 overtime may result in discipline, up to and including discharge.” Plaintiff further contended that meal
13 and rest periods were regularly missed, late, shortened, and/or interrupted, that Aggrieved Employees
14 were required to keep their cellular phones turned on during meal and rest periods and to receive and
15 respond to work related calls and text messages and to interrupt their meal and rest periods and return to
16 work as soon as they receive a call or a text message from their supervisors. Plaintiff also contended that
17 meal and rest periods were cut short by approximately 3-5 minutes’ walking distance to the break area
18 and back to their workstation. Defendant failed to properly pay premiums for all non-compliant meal and
19 rest periods. Additionally, Plaintiff alleged that Defendants intentionally and willfully failed to pay
20 Plaintiff and Aggrieved Employees all wages due to them while they were employed by Defendants,
21 within the time period permissible under California law, and that Defendant failed to pay all wages due
22 upon termination, within the time period permissible under California law, thereby triggering waiting-
23 time penalties under California Labor Code section 203. Plaintiff contended that, based on the violations
24 described herein, the wage statements provided by Defendants and the payroll records kept by
25 Defendants were inaccurate. Finally, Plaintiff contended that Defendants failed to reimburse Plaintiff and
26 the other Aggrieved Employees for necessary business expenses, including, but not limited to, the costs
27 associated with the use of personal cell phones which were used to download an application called
28 “Paylocity” to record their time and to respond to work related calls and messages. Plaintiff and

1 Aggrieved Employees were also required to purchase additional uniforms and maintain those uniforms
2 since the uniforms provided by Defendants were not enough.

3 23. Defendants deny Plaintiff's claims. Plaintiff's Counsel considered defense arguments, e.g.,
4 that the employer's practices, policies, and procedures complied with the law, that Defendants paid
5 Aggrieved Employees over the California minimum wage for all hours worked, that employees worked
6 off-the-clock without knowledge of a supervisor or Defendants, that Defendants correctly paid overtime
7 for all overtime hours worked, that Defendants paid meal premiums for some pay periods, that meal
8 break waivers are not required to be in writing under California law, that use of cell phone for
9 downloading applications was voluntary, that no waiting-time penalties were due because waiting time
10 penalties only arise from "willful" failure to pay wages due and owing at the time of termination or
11 resignation, that Plaintiff and Aggrieved Employees suffered no actual injury from the alleged wage
12 statement violations and that this alleged violation and the alleged recordkeeping violation are entirely
13 derivative of the other causes of action, and that a policy and practice of reimbursing employees for
14 necessary business-related expenses exists. Plaintiff's Counsel also considered the likelihood of
15 Plaintiff's success in establishing that any of provisions of the California Labor Code, on which the civil
16 penalties under PAGA are predicated, were violated and that such violations were injurious and/or
17 warranted imposition of civil penalties. Plaintiff's Counsel also considered that trial courts have wide
18 discretion when assessing penalties under PAGA, and that it could be determined that individual liability
19 issues predominate (e.g. due to purported variation in shifts, job duties, and other circumstances which
20 could raise individualized questions of fact) and could pose challenges to manageability, and the merits
21 of Plaintiff's claims.

22 24. Plaintiff's Counsel considered information obtained through investigations and from
23 Plaintiff, as well as class data and information obtained from Defendants and other sources, and created
24 violation, damages, and penalties valuations and models prior to reaching the settlement. Based thereon,
25 Plaintiff calculated the potential value of the claims. However, the potential value of each claim assumed
26 an exposure based on the Plaintiff having proven all elements of the claims and entitlement to monetary
27 recovery, despite risks associated with demonstrating manageability, and establishing liability and any
28 underlying California Labor Code violations and damages, and significant additional costs that would

1 have to be incurred in order to certify the case and establish liability and damages. Plaintiff also faced the
2 risk of the Court finding that individualized issues predominate, such that the action is not suitable for
3 representative adjudication. While Plaintiff's Counsel disagreed with defense arguments and factual
4 contentions, Plaintiff's recognized the circumstances and realities of the case, applicable case law and
5 regulations, the costs and expenses of further litigation, and risks to recovery, and applied appropriate
6 discounts for them.

7 25. After analyzing the claims in this matter, Plaintiff has concluded that the value of this
8 Settlement is fair, adequate, and reasonable. The Settlement provides a significant monetary benefit that
9 falls well within "the range of an acceptable settlement" under the circumstances, which is the standard
10 on which the instant Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair
11 and reasonable even where it only provides a fraction of what could have been obtained at trial. The
12 reasonable value of the Settlement was evaluated two ways.

13 (a) First, using the most straightforward formulation of applying the "catch-all" \$100 penalty
14 specified in Labor Code § 2699(f)(2) to each pay period per employee, for all of the
15 estimated 3,800 pay periods through mediation, the maximum single penalty plausible
16 exposure under that direct approach is **\$380,000.00**. The Settlement of **\$99,500** is about
17 26.2% of that roughly estimated maximum exposure value. When considering the
18 serious risks discussed herein, and the Court's inherent power to adjust penalties
19 downward to reflect an employer that sought to be in compliance with wage and hour
20 laws, even if mistakes were sometimes made, the compromise figure is reasonable.

21 (b) Second, the Settlement can also be evaluated by looking at each allegation and the
22 penalty that would attach thereto. The Settlement of **\$99,500** is 52.2% of the **\$190,464.00**
23 estimate of *risk-adjusted* penalty recovery (excluding interest) at this stage in the
24 litigation, *based upon a penalty-by-penalty analysis*. On that basis, it would be unwise to
25 pass up this settlement opportunity. This assessment is based on a carefully constructed
26 model of the current fair value of the case, using estimated risks, appellate authority, and
27 estimates of violation frequency by pay period. The maximum calculated plausible risk-
28 adjusted exposure is **\$570,590.00**, *when examining each penalty provision separately*.

The estimate of the value of each claim consists of the following components:

- 1) The reasonably estimated penalty exposure for unpaid off-the-clock work described in Paragraph 22 of this declaration was estimated to be **\$95,000.00** which is a risk adjusted estimation of the maximum possible exposure of \$380,000.00 (3,800 pay periodsX\$100 penalty) after 75% reduction (25% of \$380,000.00) should Plaintiff be able to prove 100% liability for all 146 employees worked 3,800 pay periods during PAGA period for this one violation. Based on the fact of impossibility to collect testimony from all employees regarding off-the-clock work and the risk of manageability and ability to prove liability since the claims are not based on Defendants' records, the risk-adjusted estimated exposure is estimated to be **\$47,500.00**, based on a risk reduction of 50%, before any Court-imposed reductions for good faith conduct by Defendants.
- 2) The reasonably estimated exposure for meal break violations over the PAGA period was calculated at **\$94,450.00** which is a risk adjusted estimation of the maximum possible exposure of \$377,800.00(3,778 pay periodsX\$100 penalty) after 75% reduction (25% of \$377,800.00) should Plaintiff be able to prove assumption based 99.4% liability for all 146 employees worked 3,800 pay periods during PAGA period for this one violation. The number of PAGA pay periods with at least one assumption-based meal break violation after offsetting the paid meal premiums is 3,778, i.e. 99.4% of all pay periods during PAGA period. The assumption-based violation rate is based on the contention that each and every employee should have been paid meal premium for each meal break which was not compliant due to the time spent on walking to the break area and that Aggrieved Employees had to keep the cell phones turned on and interrupt their meal breaks by responding to calls. However, Defendants' produced sample meal period records show a 12.7% unique meal period violation rate, 98.2% of shifts greater than 10 hours had no second meal period recorded and 86.7% of shifts greater than 12 hours had no second meal period recorded. Defendants have not produced written meal break waivers but argued that California law does not require meal break waivers to be in writing. Based on the records of facial violations and the serious risk that employee choice would become an issue that impeded proof, the risk-adjusted estimated exposure is estimated to be **\$37,780.00**, based on a risk reduction of 60%, before any Court-imposed reductions for good faith conduct by

Defendants.

- 3) The reasonably estimated exposure for rest break violations over the PAGA period was calculated at **\$95,000.00** which is a risk adjusted estimation of the maximum possible exposure of \$380,000.00 (3,800 pay periodsX\$100 penalty) after 75% reduction (25% of \$380,000.00) should Plaintiff be able to prove 100% liability for all 146 employees worked 3,800 pay periods during PAGA period for this one violation. Based on the lack of facial violations as rest breaks were not recorded, the risk-adjusted estimated exposure is estimated to be **\$28,500.00**, based on a risk reduction of 70%, before any Court-imposed reductions for good faith conduct by Defendants.
- 4) The risk-adjusted penalty recovery for violation of Labor Code § 203 was estimated to be approximately **\$684** on a maximum exposure of **\$1,140.00** after risk-adjusted 80% reduction (20% of \$5,700.00) given the number of terminated employees during the PAGA period was 57(57 employeesX\$100 penalty). To avoid an imposition of penalties for failing to pay wages at termination, Defendants would necessarily be forced to prevail on several distinct theories of recovery. However, I believe it would be unrealistic to expect the Court to award the full exposure amount given the foregoing issues and potential defenses regarding the underlying wage claims, including that any failure to pay wages at termination was not willful or intentional. See, e.g., *Pedroza v. PetSmart, Inc.* C.D. Cal. June 14, 2012, No. ED CV 11–298 GHK (DTBx) 2012 WL 9506073, *5. A risk reduction of 40% was applied to reflect the contingent nature of this claim and the additional need to demonstrate willful misconduct.
- 5) The risk-adjusted penalty recovery for violation of Labor Code § 226 was estimated to be approximately **\$38,000.00**, on a maximum exposure of **\$190,000.00** which is a risk adjusted estimation of the maximum possible exposure of \$950,000.00 (3,800 pay periodsX\$250 penalty) after 75% reduction (25% of \$950,000.00) should Plaintiff be able to prove 100% liability for all 146 employees worked 3,800 pay periods during PAGA period for this one violation calculated as heightened \$250 penalty for each violation pursuant to California Labor Code Section 226.3. To avoid an imposition of penalties for failing to provide correct itemized wage statements (including correct gross and net wages earned, and total hours worked), Defendants would necessarily be forced to prevail on several distinct theories of recovery.

1 However, I believe it would be unrealistic to expect the Court to award the full exposure
2 amount given the foregoing issues and potential defenses regarding the underlying wage claims,
3 including that any failure to provide accurate itemized wage statements was not willful or
4 intentional. See, e.g., *Pedroza v. PetSmart, Inc.* C.D. Cal. June 14, 2012, No. ED CV 11–298
5 GHK (DTBx) 2012 WL 9506073, *5. A risk reduction of 80% was applied to reflect the
6 contingent nature of this claim and the additional need to demonstrate willful misconduct.

7 6) The risk-adjusted penalty recovery for violation of Labor Code § 2082 was estimated to be
8 approximately **\$38,000.00**, on a maximum exposure of **\$95,000.00** which is a risk adjusted
9 estimation of the maximum possible exposure of \$380,000.00 (3,800pay periodsX\$100
10 penalty) after 75% reduction (25% of \$380,000.00) should Plaintiff be able to prove 100%
11 liability for all 146 employees worked 3,800 pay periods during PAGA period for this one
12 violation. A risk reduction of 60% was applied to reflect the risk of manageability and proving
13 liability given Defendants deny that downloading and using “Paylocity” application on personal
14 cell phones or usage of personal cell phones to respond to work-related calls and messages was
15 mandatory.

16 7) Performing risk-adjusted valuations for all claims yields a total value in the range of **\$190,**
17 **464.00.**

18 Notably, the maximum plausible exposure assumes high violation rates that would not likely be
19 demonstrated. And the maximum plausible exposure assumes either the participation of all aggrieved
20 employees or the use of surveys or statistical data as a surrogate, which would still require the
21 participation of hundreds of persons to have adequate validity. Finally, Defendants’ ability to assert
22 viable legal defenses would further reduce the maximum plausible exposure. Beyond that, the Court
23 would retain discretion to reduce any established penalties based upon Defendants’ compliant policies.
24 Thus, the likely PAGA exposure is far below the optimistic estimate. Moreover, Defendants contend that
25 like Plaintiff, all of its employees have signed arbitration agreements that would cover any of their
26 claims. Therefore, were the Parties to continue litigation, the existence of arbitration agreements signed
27 by Aggrieved Employees would severely limit the likelihood of any recovery whatsoever. Accordingly,
28 settlement is in the best interests of the Aggrieved Employees.

1 26. Plaintiff's Counsel are also of the opinion that because the issues here are fairly contested,
2 there is a possibility of the Court not awarding PAGA penalties even if Plaintiff prevailed on the merits
3 due to the largely discretionary nature of awarding PAGA penalties. Indeed, under Labor Code section
4 2699, subdivision (e)(2), a Court can reduce PAGA penalties "if, based on the facts and circumstances of
5 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
6 confiscatory." (Lab. Code § 2699(e)(2).) In other words, were this matter to go to trial, any award
7 granted would be at the discretion of the Court and subject to a substantial reduction.

8 27. The Settlement is the product of arm's-length negotiations between the Parties occurring
9 throughout the litigation. In light of the uncertainties of protracted litigation and the state of the law
10 regarding the legal positions of the Parties, the settlement amount reflects the best feasible recovery. The
11 settlement amount is, of course, a compromise figure. By necessity it took into account risks related to
12 liability, damages, and all the defenses asserted by the Defendants. Given the strong case that
13 Defendants could bring to bear, this is not an inconsequential settlement.

14 ESTIMATED SETTLEMENT PAYMENTS TO PAGA MEMBERS

15 28. The amount to be designated as PAGA Penalties is \$50,415.96, which will be distributed as
16 75% (\$37,811.97) to the LWDA and 25% (\$12,603.99) to the Aggrieved Employees. The Aggrieved
17 Employees group consists of 146 non-exempt employees who are or were employed by Defendants
18 within the State of California from March 15, 2022, to August 17, 2023, i.e. during the PAGA period. It
19 is estimated that there are approximately 3,800 pay periods during the PAGA period. As a result, each
20 Aggrieved Employee will receive an estimated average amount of \$86.3. The amount to Aggrieved
21 Employees will vary based on each individual's duration of employment during the PAGA Period. Thus,
22 those who worked longer for Defendants during the relevant period will receive a benefit greater than the
23 average estimated amount. The high and low range of payments to Aggrieved Employees at this time is
24 unknown, as these amounts will be calculated by the Settlement Administrator following approval and
25 the receipt and processing of the employee data.

26 OTHER PENDING ACTIONS

27 29. I made reasonable inquiry of other members at Tunyan Law, APC, and I am not aware of any
28 actions which assert claims similar to those asserted in the above-captioned matter, on behalf of a group

1 of individuals some or all of whom would be members of the PAGA group defined in this action.

2 THE EXPERIENCE OF COUNSEL

3 30. I am a founding partner of Tunyan Law, APC and has been engaged in the practice of
4 employment and labor law for more than four years and focused exclusively on plaintiffs' employment
5 law and wage-and-hour class actions and more than twenty-four years in practice of law in general. I
6 have handled hundreds of wage-related class actions.

7 31. Prior to establishing my own practice, I was an associate attorney at Moon & Yang, APC and
8 Mahoney Law Group, APC. Since I was admitted to the California Bar, my practice has focused mainly
9 on labor and employment class action lawsuits involving California and federal labor laws. Along with
10 those firm's other attorneys I have successfully settled more than fifty class action and PAGA matters
11 during that time span and was routinely appointed lead or co-lead class counsel in courts in California
12 including by way of motion for class certification.

13 32. I received my Juris Doctorate from the State Yerevan University and my LL.M. from
14 University of Minnesota Law School. Prior to moving to California and starting to practice law in
15 California I practiced law in Armenia for about twenty years as a licensed attorney. I have been general
16 counsel and head of legal department for big telecommunication and financial corporations in Armenia
17 for the last twelve years prior to moving to California. I managed corporate legal department and
18 corporate legal and regulatory affairs and handled complex litigation matters as well as complex
19 transactions for many years.

20 33. I am a current member of the California Employment Lawyers Association (CELA) and the
21 California Consumer Attorneys Association of Los Angeles (CAALA). I have been an active member of
22 the State Bar of California in good standing.

23 34. I am experienced in prosecuting employment matters, particularly class actions, and I focused
24 a substantial percentage of my practice on wage, hour, and working conditions violations. In addition to
25 the present case, I represented plaintiffs and the class members and have extensively worked on many
26 wage-and-hour class cases and have been appointed as class or PAGA counsel along with other counsel
27 and co-counsel for wage-and-hour class action lawsuits in various counties throughout California such as:
28 *Evans, et al. v. Downtown Women's Center*, Los Angeles County Superior Court, Case N

22STCV06578 (class certification motion granted in part); *Sanchez v. Anodizing Industries, Inc.*, Los Angeles County Superior Court, Case N 21STCV30722; *Godoy v. Intertrade Industries, LTD*, Orange County Superior Court, Case No. 30-2020-01151921-CU-OE-CXC; *Fuentes v. Actron Manufacturing Inc.*, Los Angeles Superior Court, Case N 20STCV31099; *Gonzalez v. Community Health Systems, Inc.*, San Bernardino County Superior Court, Case N CIVDS2015678; *Rodriguez v. Progress Lighting, Inc. et al.*, San Bernardino County Superior Court, Case N CIVDS2023894; *Castillo v. Gibson Overseas, Inc.*, San Bernardino Superior Court, Case N CIVDS2022537; *Mumphrey v. People's Care Northern California, Inc. et al.*, San Joaquin County Superior Court, Case N STK-CV-UOE-2019-0016397; *Ochoa v. Orlando Spring Corp*, Los Angeles Superior Court, Case N 20STCV343129; *Findley v. USC, et al.*, Los Angeles Superior Court, Case N 20STCV47290; *Maldonado v. Techmer PM, LLC*, Los Angeles Superior Court, Case N 20STCV21918; *Huerta v. IRS*, Los Angeles Superior Court, Case N 20STCV09163; *Mata v. Marukai Corporation*; Los Angeles Superior Court, Case N 20STCV00959; *Tapia v. Home &Body*; Orange County Superior Court, Case N 30-2020-01155185-CU-OE-CXC; *Ruvalcaba v. Quinn Group, Inc.*, Los Angeles Superior Court, Case N 20STCV41323; *Bravo v. FIDM*, Los Angeles Superior Court, Case N 19STCV25338; *Lomeli v. Plaskolite et al.*, Los Angeles Superior Court, Case N 21STCV14611; *Alcantar v. Classic Salads LLC*, Santa Cruz County Superior Court, Case N 21CV002309; *Casas v. Freedom Solar Services, et al.*, Los Angeles Superior Court, Case N 21STCV20233; *Serrano v. Barstow Community Hospital*, San Bernardino Superior Court, Case N CIVDS2006967; *Lopez v. Fairway Staffing Services, et al.*, Los Angeles Superior Court, Case N 21STCV26640; *Linden v. Marugame Udon USA, LLC*, Los Angeles Superior Court, Case No. 20STCV00728; *Salter v. U.S. Reports, et al.*, Los Angeles Superior Court, Case N 19STCV30384; *Perez v. Torn & Glasser, Inc.*, Los Angeles Superior Court, Case N 21STCV43614; *Gomez v. Arya Ice Cream Distributing Co., Inc*, Los Angeles Superior Court, Case N 21STCV31170; *Herrera v. Coastal Construction & Lumber*, Santa Cruz County Superior Court, Case N 22CV394683; *Garcia v. San Jose Water Company*, Santa Clara County Superior Court, Case No. 22CV396328; *Ramirez v. Partners Personnel Management Services LLC*, Los Angeles Superior Court, Case N 21STCV31253; *Ramirez v. Merrill Gardens LLC*, Eastern District Court of California, Case N1:22-cv-00542-DAD-SAB; *Garcia v. Tri-Valley Plastering, Inc.*,

1 Fresno County Superior Court, Case N 22CECG00591; *Garcia v. South Valley Companies, Inc.*,
2 Kern County Superior Court, Case N BCV-22-100465; *Morales v. Wiseguys Custom Home Theater,*
3 *LLC*, San Diego Superior Court, Case N37-2019-00070151-CU-OE-CTL.

4 35. Artur Tunyan is another partner and attorney at Tunyan Law, APC. He received his Juris
5 Doctorate from the State Yerevan University and his LL.M. from the American University of
6 Armenia and University of Illinois Chicago, School of Law. Prior to moving to California and
7 starting to practice law in California he practiced law in Armenia for about twenty-five years. He
8 oversaw international donor-funded projects for the judiciary and managed public-private
9 partnership initiatives in sectors such as energy, banking, finance, and aviation. He managed
10 complex transactions and litigation matters for many years.

11 REASONABLENESS OF THE REQUESTED FEE AWARD

12 Case Management Order Section D(3)

13 36. When this case was taken on a contingent fee basis, with the firm agreeing to assume
14 responsibility for litigation costs, the ultimate result was far from certain. In the course of this litigation,
15 Tunyan Law, APC, paid filing fees, copy charges, expert fees, mediation fees, Westlaw fees, mailing,
16 telephone and express mail charges. There was never a guarantee that Tunyan Law, APC would recoup
17 those expenditures. The firm took on this case, which necessarily required the firm to forego other
18 opportunities, given finite resources to devote to cases.

19 37. Because of the uncertainty of the outcome in this and other wage and hour litigation
20 undertaken by Tunyan Law, APC, we took this case with the expectation that a risk enhancement, either
21 in the form of a lodestar multiplier or a percentage of the fund award equivalent thereto, would be
22 available if we prevailed. This expectation stems from the fact that many cases we undertake as putative
23 class actions do not resolve successfully.

24 38. Counsel's experience in employment class actions was integral in evaluating strengths and
25 weaknesses of the case against Defendants and the reasonableness of the settlement. Practice in the
26 narrow fields of wage and hour litigation requires skill and knowledge concerning the rapidly evolving
27 substantive law (state and federal), as well as the procedural law of class action litigation.

28 39. In the past four years, I have settled many wage-and-hour class actions. Just as the Court in

1 *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) observed, it has been my experience, that
2 attorney fee awards of one-third of a common settlement fund are the rule, rather than the exception.
3 Here, PAGA group Counsel agrees that they will seek no more than one third of the settlement amount in
4 fees. This is consistent with common practice, consistent with Ninth Circuit practice, consistent with
5 California law approving the percentage of the fund method to award fees from a common fund, *Laffitte*
6 *v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016), and not inappropriate in light of the many hours
7 expended by attorneys performing work for Plaintiff before and after the filing of this matter. That work
8 includes:

- 9 (a) Numerous interviews with Plaintiff and review of documents provided by Plaintiff;
- 10 (b) Investigation of the matter and exploring the corporate structure of Defendants;
- 11 (c) Legal research and investigation regarding the Defendants' practices at numerous
12 points in the litigation;
- 13 (d) Preparation of multiple drafts of the original complaints and finalization and filing
14 of the original complaints;
- 15 (e) Extensive "meet and confer" efforts with Defendants' counsel regarding mediation
16 and obtaining relevant documents and information through informal discovery;
- 17 (f) Selecting a mediator and mediation date;
- 18 (g) Drafting and amending the LWDA Notice letter;
- 19 (h) Drafting an amending complaints and stipulations;
- 20 (i) Drafting joint statements and joint stipulations;
- 21 (j) Review of payroll, job position, and time data;
- 22 (k) Review of Defendants' policy documents;
- 23 (l) Working with opposing counsel for the receipt of a representative sampling and
24 analyzing the same with the aid of expert consultants and Plaintiff to perform
25 analyses of liability and exposure prior to attendance of the mediation, preparation
26 of a damages model with the aid of a statistics expert;
- 27 (m) Review and revisions to the damage model and supporting data analysis;
- 28 (n) Research and preparation of Plaintiff's mediation brief;

- (o) Communicate with Plaintiff who requested updates or other information regarding this matter;
- (p) Attendance at mediation;
- (q) Drafting, negotiating, and reviewing multiple drafts of the Agreement and attachments;
- (r) Preparation of the motion for settlement approval; and,
- (s) Review of edits to the motion for settlement approval and revisions to all documents to conform
- (t) Preparation of the amended motion for settlement approval and supporting documents in compliance with court's PAGA Case Management Order.

40. The actual lodestar incurred by Plaintiff's counsel is approximately **\$75,632.50** to date (and estimated to be **\$77,882.50**). The breakdown of work by attorney is as follows:

Attorney	Time	Rate	Total
Lilit Tunyan	161.05	\$450	\$72,472.5
Artur Tunyan	7.9	\$400	\$3,160.00
	168.95	Total:	\$75,632.50

41. I also anticipate that we will spend an additional 5 hours on this matter, appearing at the hearing of this Motion, working with the administrator to process the Settlement, and preparing final accounting filings after distribution of the Settlement, for an additional lodestar of \$2,250.

42. The fee request is **\$33,166.67**, which is one third of the Gross Settlement Amount, as specified in the Settlement Agreement. The requested sum of **\$33,166.67** constitutes a negative lodestar multiplier of 2.3, when compared to just the recorded, and estimated future lodestar of Tunyan Law, APC, totaling **\$77,882.50** (\$75,632.5 + \$2,250). The requested fee of \$33,166.67 will be split with Majarian Law Group, APC with 40% to Majarian Law Group, APC and 60% to Tunyan Law, APC pursuant to California Rules of Professional Conduct, Rule 1.5.1. as a referral fee. Pursuant to California Rules of Professional Conduct, Rule 1.5.1 Plaintiff gave her consent in writing by signing a separate fee sharing agreement which also notified Plaintiff that the total fee charged by all lawyers will not be

1 increased for the reason of the agreement to divide fees.

2 43. The Agreement also provides for the award of actual costs. Plaintiff's actual, out-of-pocket
3 costs in taking on representation in this Lawsuit on a contingency basis are currently \$12,667.37 which
4 include motion re-filing fees, as set forth in **Exhibit "2."** Therefore, Tunyan Law, APC, requests an
5 award of **\$12,667.37** to reimburse costs incurred in bringing this action.

6 THE SETTLEMENT ADMINISTRATOR

7 Case Management Order Section D(8)(a)

8 44. The parties have agreed that administration will be handled by a third-party administrator. In
9 counsel's experience as class counsel in similar wage-and-hour actions with a similar number of
10 employees, ILYM Group, Inc. is fully capable of administering the Settlement at a competitive and
11 reasonable cost and should be approved by the Court to administer the Settlement notice process.
12 Administration will cost **\$3,250.00**. After obtaining competing bids from four potential settlement
13 administrators (Simpluris, Inc., CPT Group class action administrators, Phoenix class action
14 administrators and ILYM Group, Inc.) ranging from \$3,250.00 to \$7,000.00, the Parties have agreed to
15 retain ILYM Group, Inc. ("Settlement Administrator"), which quoted \$3,250.00 flat fee, to handle the
16 notice and settlement administration process. The Parties respectfully request that the Court appoint
17 ILYM Group, Inc. to handle these procedures and serve as the Settlement Administrator. Defendants will
18 provide the Settlement Administrator with a list of Aggrieved Employees within 15 days from the entry
19 of the order approving Settlement that Defendants will compile from its records, which will include each
20 Aggrieved Employee's last known full name, last known address, last known telephone number, Social
21 Security number and employee ID number, start and end dates of employment as a non-exempt and/or
22 hourly-paid employee of Defendant in California during the PAGA Period, and other such mutually
23 agreed upon information by the Parties as may be necessary for the Settlement Administrator to
24 independently calculate and review the Pay Periods attributed to each Aggrieved Employee, and the
25 Settlement Administrator will calculate each Aggrieved Employee's estimated share of the twenty-five
26 percent (25%) portion of the PAGA Payment. The Settlement Administrator will also establish
27 Qualified Settlement Fund Escrow Account, prepare, administer, and distribute settlement checks to the
28 Aggrieved Employees, including necessary tax forms (W2 and/or 1099), calculate and withhold all

1 applicable state and federal taxes, should any disbursements be returned to ILYM Group's office as
2 undeliverable, ILYM Group will attempt to locate an update address using the NCOA database and/or
3 other skip trace efforts and will promptly remail the disbursement, redistribute all uncashed checks to
4 those aggrieved employees who had previously cashed their settlement checks, perform any other usual
5 and customary duties for administering a PAGA action settlement. Settlement Administration Fees are
6 currently estimated not to exceed \$3,250.00 and will be paid out of the Gross Settlement Amount,
7 subject to approval of the Court.

8 GENERAL RELEASE OF CLAIMS BY PLAINTIFF AND NATURE AND VALUE OF
9 CLAIMS

10 Case Management Order Section D(4)(a)-(d)

11 45. As part of the proposed Settlement, Plaintiff shall receive a General Release Payment in
12 exchange for representing other employees of Defendants and the State of California and full release of
13 claims related to her employment with Defendants as described in the Section 2 of the PAGA settlement
14 and release agreement Plaintiff signed that extends beyond the release of PAGA claims applicable to
15 other aggrieved employees and beyond wage-and-hour claims pleaded in Plaintiff's original complaint.
16 (Agreement, ¶ 2.) The nature of unpled individual claims released by Plaintiff include, without limiting
17 any and all claims, demands, causes of actions, obligations, charges, liabilities, attorneys' fees, costs,
18 actual, compensatory and punitive damages, and all claims for any other type of relief relating to, arising
19 out of, or based upon all claims of harassment, discrimination, and/or retaliation in violation of State or
20 Federal law; all claims for failure to prevent harassment, discrimination, and/or retaliation; any and all
21 claims for failure to engage in the good faith interactive process and/or provide reasonable
22 accommodation; all claims for violation of obligations to provide leave or retaliation for exercising rights
23 to leave; all claims of violation of public policy, including a claim for wrongful and/or constructive
24 termination of employment; all claims based on tort and/or breach of contract, whether written or oral,
25 express or implied, and any covenant of good faith and fair dealing; all claims for unpaid wages,
26 commissions, or other forms of compensation or benefits, including minimum wage, overtime, double
27 time, vacation, associated penalties and/or premiums, and expense reimbursement; all claims for rest or
28 meal periods and associated penalties and/or premiums, and any and all claims for alleged violations of

1 the California Labor Code generally; any claim for unlawful or unfair business practices; all claims for
2 emotional distress; any and all claims which were or could have been asserted by Plaintiff; and all claims
3 generally relating to Plaintiff's employment relationship, any type of relationship, and/or interactions
4 with Releasees and the cessation thereof, including any alleged violation of any federal, state or other
5 governmental statute, regulation, ordinance, or executive order, including without limitation:

6 (1) The Civil Rights Acts of 1866, 1964, and 1991, as amended;

7 (2) 42 U.S.C. § 1981;

8 (3) The California Fair Employment and Housing Act;

9 (4) Section 503 of the Rehabilitation Act of 1973;

10 (5) The Fair Labor Standards Act (including the Equal Pay Act);

11 (6) The California and United States Constitutions;

12 (7) The California Labor Code, specifically including, but not limited to the Private Attorneys
13 General Act pursuant to Labor Code § 2699, et seq.;

14 (8) The California Business & Professions Code;

15 (9) The Employee Retirement Income Security Act, as amended;

16 (10) The Americans with Disabilities Act;

17 (11) The Age Discrimination in Employment Act;

18 (12) The Family Medical Leave Act;

19 (13) The California Family Rights Act;

20 (14) The California Pregnancy Discrimination Act;

21 (15) The California Wage Orders;

22 (16) The National Labor Relations Act;

23 (17) The Immigration Reform and Control Act;

24 (18) The California Occupational Safety and Health Act, or the Federal equivalent;

25 (19) The Worker Adjustment and Retraining Notification Act; and

26 (20) The Families First Coronavirus Response Act.

27 Plaintiff's Released Claims do not extend to claims by Plaintiff that arise after execution of the
28 agreement, for claims by Plaintiff for workers' compensation benefits or unemployment insurance

benefits.

46. Since Plaintiff and each Aggrieved Employee will receive their individual portion of PAGA penalties from the Net Settlement Amount which does not include actual wage damages, Plaintiff has additionally agreed to general release of all wage-and-hour claims against Defendants as well as other non-wage related potential claims listed in Section 2 of the Settlement Agreement and Paragraph 45 of this declaration. The estimate of Plaintiff's wage-and-hour claims and actual wage damages consist of the following components:

- 1) The reasonably estimated damage exposure for unpaid off-the-clock work described in Paragraph 22 of this declaration for Plaintiff was estimated to be **\$1,116.25** which is a risk adjusted estimation of the maximum possible exposure of **\$5,581.25** (190 workweeksX\$1.25 hours per workweekX\$23.5 (overtime rate) after 75% reduction (25% of **\$5,581.25**) for this one violation. Based on the defenses and arguments brought by Defendants as stated in this declaration and Defendants' denial of any off-the-clock work by Plaintiff and ability to prove liability since this claim is not based on Defendants' records, the risk-adjusted estimated exposure is estimated to be **\$558.125**, based on a risk reduction of 50%, before any Court-imposed reductions for good faith conduct by Defendants.
- 2) The reasonably estimated exposure for meal break violations from March 16, 2019 to October 28, 2022 (Plaintiff was employed starting from October 2017 to October 28, 2022 but given the Statute of Limitations the exposure is calculated from March 16, 2019) was calculated at **\$1,615** which is a risk adjusted estimation of the maximum possible exposure of **\$6,460**(190 workweeksX2 violations per workweekX \$17 (hourly rate)) after 75% reduction (25% of **\$6,460**) should Plaintiff be able to prove assumption based liability for meal break violations after offsetting the paid meal premiums and ability to prove liability not based on records. The risk-adjusted estimated exposure is estimated to be **\$807.5**, based on a risk reduction of 50%, before any Court-imposed reductions for good faith conduct by Defendants.
- 3) The reasonably estimated exposure for rest break violations from March 16, 2019 to October 28, 2022 (Plaintiff was employed starting from October 2017 to October 28, 2022 but given the Statute of Limitations the exposure is calculated from March 16, 2019) was calculated at

\$1,615 which is a risk adjusted estimation of the maximum possible exposure of **\$6,460**(190 workweeksX2 violations per workweekX \$17 (hourly rate)) after 75% reduction (25% of **\$6,460**) should Plaintiff be able to prove assumption based liability for rest break violations and ability to prove liability not based on records. The risk-adjusted estimated exposure is estimated to be **\$807.5**, based on a risk reduction of 50%, before any Court-imposed reductions for good faith conduct by Defendants.

- 4) The risk-adjusted recovery for violation of Labor Code § 203 was estimated to be approximately **\$544** on a maximum exposure of **\$2,720** (20 working daysX8hoursX\$17) after risk-adjusted 80% reduction (20% of **\$2,720**) given it would be unrealistic to expect the Court to award the full exposure amount given the foregoing issues and potential defenses regarding the underlying wage claims, including that any failure to pay wages at termination was not willful or intentional. See, e.g., *Pedroza v. PetSmart, Inc.* C.D. Cal. June 14, 2012, No. ED CV 11–298 GHK (DTBx) 2012 WL 9506073, *5.
- 5) The risk-adjusted penalty recovery for violation of Labor Code § 226 was estimated to be approximately **\$400**, on a maximum exposure of **\$4,000** which is a risk adjusted estimation of the maximum capped exposure of **\$4,000** (1workweekX\$50+189workweeksX\$100) after 90% reduction (10% of \$4,000.00) as I believe it would be unrealistic to expect the Court to award the full exposure amount given the foregoing issues and potential defenses regarding the underlying wage claims, including that any failure to provide accurate itemized wage statements was not willful or intentional. See, e.g., *Pedroza v. PetSmart, Inc.* C.D. Cal. June 14, 2012, No. ED CV 11–298 GHK (DTBx) 2012 WL 9506073, *5. A risk reduction of 90% was applied to reflect the contingent nature of this claim and the additional need to demonstrate willful misconduct.
- 6) The risk-adjusted penalty recovery for violation of Labor Code § 2082 was estimated to be approximately **\$550**, on a maximum exposure of **\$2,200.00** which is a risk adjusted estimation of the maximum possible exposure of \$2,200.00 (\$50 cell phone monthly billX44 months) after 75% reduction (25% of \$2,200.00) given the risk of proving liability as Defendants deny that downloading and using “Paylocity” application on personal cell phones or usage of personal cell phones to respond to work-related calls and messages was mandatory and given Plaintiff

1 was entitled to reasonable amount of reimbursement for cell phone bill not the full bill should
2 Plaintiff be able to prove liability.

3 Performing risk-adjusted valuations for all claims yields a total value in the range of \$5,840.25 which
4 does not include the value of not pleaded and not alleged by Plaintiff non-wage-and-hour claims released
5 upon Defendants' request for receipt of General Release Payment. General Release Payment in the
6 amount of \$5,000.00 requested by Plaintiff for general release of all claims and representing other
7 employees of Defendants and the State of California is 85.6% of the risk-adjusted value of Plaintiff's
8 non-PAGA wage-and-hour claims, and is reasonable.

9 EXHIBITS

10 Case Management Order Section D(1)(a)

11 47. As noted above, a true and correct copy of the PRIVATE ATTORNEYS GENERAL ACT
12 AMENDED SETTLEMENT AGREEMENT AND RELEASE is attached hereto as **Exhibit "1."**

13 48. Attached hereto as **Exhibit "2"** is a true and correct copy of the current expense ledger for
14 Tunyan Law, APC.

15 NOTICE WAS PROVIDED TO THE LWDA

16 Case Management Order Section D(1) (c)

17 49. A copy of the PRIVATE ATTORNEYS GENERAL ACT AMENDED SETTLEMENT
18 AGREEMENT AND RELEASE was submitted to the LWDA prior to the filing of this motion. That
19 submission is attached hereto as **Exhibit "3."**

20 50. Plaintiff's Counsel submits that this settlement is fair, reasonable, and adequate, and is in the
21 best interests of Plaintiff, Aggrieved Employees, and the State of California. Plaintiff's Counsel further
22 submits that the Settlement and accompanying moving papers satisfy the requirements set forth in the
23 PAGA Case Management Order #1 issued by the Court, as reflected in the concurrently filed
24 Compliance Chart. Plaintiff's Counsel further submits that the Settlement is within an acceptable range
25 of recovery for this type of litigation given the strengths and weaknesses of the case, the inherent costs
26 and risks of further litigation, and the costs and risks associated with representative adjudication, trial,
27 and/or appeals.

28 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is

true and correct. Executed this 22nd day of January 2024, at Glendale, California.



LILIT TUNYAN, "Declarant"

Exhibit “1”

PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AMENDED AGREEMENT AND RELEASE

This Private Attorneys General Act Settlement Amended Agreement and Release ("Agreement" or "Settlement") is made by and between Plaintiff YADIRA GONZALEZ ("Plaintiff"), individually, and on behalf of all other aggrieved employees (the "Aggrieved Employees" or "PAGA Group" as described below), and as a private attorney general on behalf of the State of California pursuant to Labor Code section 2699, *et seq.*, the California Private Attorneys General Act ("PAGA") on the one hand, and Defendants RV RETAILER SAN DIEGO, LLC; and BLUE COMPASS RV, LLC f/k/a RV RETAILER, LLC ("Defendants"), on the other hand. Plaintiff and Defendants are collectively referred to herein as "the Parties."

This Agreement, and the settlement embodied herein, shall be binding on Plaintiff, the Aggrieved Employees she represents, and Defendants, subject to the approval of the Court.

WHEREAS, on March 16, 2023, Plaintiff filed a class action complaint ("Complaint") in the Superior Court of California, Riverside County entitled *Yadira Gonzalez v. RV Retailer San Diego, LLC, et al.*, Case No. CVRI2301403 pending in Riverside County Superior Court (the "Lawsuit"). On May 22, 2023, Plaintiff filed her First Amended Complaint adding a cause of action for civil penalties under the PAGA. Shortly after filing the complaint, Defendants' counsel provided Plaintiff's counsel a copy of an arbitration agreement signed by Plaintiff. Plaintiff's counsel determined that it would likely be enforced if Plaintiff opposed arbitrating this matter, and that the class action waiver would likely be found enforceable. Prior to filing the PAGA settlement approval motion, Plaintiff intends to file an application to dismiss Plaintiff's claims one through seven against Defendants without prejudice since the Parties have reached a resolution to settle claims alleged under the eighth cause of action for civil penalties under PAGA and amended notice letter to the Labor & Workforce Development Agency ("LWDA") to add allegations regarding the violation of the Labor Code Section 6409.6 (failure to provide notice of a potential COVID-19 workplace exposure). The settlement between the Parties has been reached regarding the representative PAGA claims for civil penalties payable to herself, other aggrieved employees, and the State of California pursuant to PAGA, based on allegations that Defendants: (1) failed to pay all wages due; (2) failed to provide meal periods; (3) failed to authorize and permit rest breaks; (4) failed to timely pay final wages at termination; (5) failed to furnish accurate itemized wage statements; (6) failed to reimburse necessary business expenses. Specifically, the PAGA Claims are claims asserted or which could have been asserted in the Lawsuit and both or either of Plaintiff's Complaints and/or PAGA Notice filed with the LWDA, including all PAGA claims stated expressly or by implication in the Notice filed with the LWDA or that could have been alleged based on the facts and circumstances set forth therein. The applicable PAGA Notice related to the Lawsuit is attached hereto as **Exhibit A** (all of the foregoing is collectively referred to as Plaintiff's "PAGA Claims").

WHEREAS, on March 15, 2023, Plaintiff timely sent notice letter to the LWDA of her intent to pursue representative actions pursuant to PAGA, on behalf of herself, other aggrieved employees, and the State of California as well as amended notice letter to the LWDA to add allegations regarding the violation of the Labor Code Section 6409.6 (failure to provide notice of a potential COVID-19 workplace exposure) on September 8, 2023 on behalf of a group of aggrieved employees (the notice and the amended notice by Plaintiff to the LWDA is collectively referred to

as the "PAGA Notice" herein).

WHEREAS, during the pendency of the Lawsuit, the Parties conducted significant investigation of the facts and law and engaged in an informal discovery exchange prior to mediation. In response to Plaintiff's Counsel's informal discovery requests, Defendants provided Plaintiff's Counsel with information and documents pertaining to Plaintiff and the Aggrieved Employees, and the claims in the Lawsuit, including time punch and payroll data, to provide Plaintiff the opportunity to investigate Plaintiff's allegations and the PAGA Claims.

WHEREAS, on August 17, 2023, the Parties attended a full day mediation with experienced wage-and-hour mediator Michael D. Young, Esq. As a result, the Parties agreed to settle Plaintiff's representative PAGA Claims, taking into account all known facts and circumstances including the difficulty of proving some of Plaintiff's claims, potential defenses asserted by Defendants, the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues.

WHEREAS, for purposes of this Settlement, the Aggrieved Employees are defined as: "All non-exempt employees who are or were employed by Defendants in California from March 15, 2022 to August 17, 2023."

WHEREAS, for purposes of this Settlement, the PAGA Period is defined as the period from March 15, 2022 to August 17, 2023 ("PAGA Period").

WHEREAS, the Parties understand, acknowledge, and agree that this PAGA settlement constitutes a compromise of Plaintiff's PAGA Claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of the Representative PAGA Claims that Plaintiff and the Aggrieved Employees have or may have against Defendants and all of their current and former officers, directors, employees and agents (collectively, the "Released Parties"). The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendants or the Released Parties of any wrongdoing or liability. Specifically, Defendants and the Released Parties deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit and the PAGA Notice. Defendants and the Released Parties, among other things, contend that they have complied at all times with the California Labor Code and all applicable California laws.

WHEREAS, California Labor Code § 2699(l)(2) requires Court review and approval of any settlement of a civil action filed pursuant to PAGA.

WHEREAS, based on their own independent investigations and evaluations, Defendants and Plaintiff, and their respective counsel, are of the opinion that the amount and terms of the Settlement are fair, reasonable, and adequate and are in the best interests of the Plaintiff, the Aggrieved Employees, and Defendants in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, counsel for Plaintiff and the Aggrieved Employees, Tunyan Law, APC believes that the settlement amount entered into is in the best interests of the Aggrieved Employees and that the settlement for each Aggrieved Employee is fair, reasonable, and adequate, given the inherent risk of litigation.

WHEREAS, the Parties: (1) believe and agree that this Agreement provides for a fair, adequate,

and reasonable resolution of the PAGA Claims, (2) have investigated the facts relevant to this settlement and this Agreement, and all matters pertaining thereto, and (3) have arrived at the settlement through extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, the Parties recognize that in accordance with Labor Code section 2699(l), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. *See also Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017) (“PAGA authorizes a representative action without the need for class certification”); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (“a PAGA suit is fundamentally different than a class action” in that PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action); *Williams v. Sup. Ct.*, 3 Cal. 5th 531, 546-47 (2017) (“PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class”).

Therefore, in consideration of the promises and agreements contained herein, and to avoid the uncertainty, risks, costs, and delays associated with further litigation, the Parties agree and covenant as follows:

1. **Effective Date.** The effective date (“Effective Date”) of this Agreement shall mean the date of entry of the order of the Court approving this Agreement and the PAGA Settlement.

2. **PAGA Released Claims/Effect of Judgment on Aggrieved Employees and LWDA, and Plaintiff’s Released Claims.**

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 attached as **Exhibit A** upon the Effective Date and full funding of the Gross Settlement amount (“Released PAGA Claims”). 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. Defendants agree to enter into a separate individual settlement agreement with Plaintiff for general release of her claims and for representing all Aggrieved Employees in consideration for general release payment (“General Release Payment”). In consideration for General Release Payment Plaintiff, for herself and for her heirs, executors, administrators, successors and assigns, hereby releases, acquits and forever discharges Defendants, and each of their parents, subsidiaries and related entities, and each of

their respective officers, directors, shareholders, persons, employees, professional employer organizations (PEO), staffing agencies, agents, servants, representatives, members, attorneys, insurers, re-insurers, assigns, and affiliates and any and all other entities with whom they have been, are now, or may hereafter be affiliated with (collectively "Releasees"), from any and all claims, demands, obligations, actions, causes of action, liabilities, debts, promises, agreements, demands, attorneys' fees, losses and expenses, known or unknown, suspected or unsuspected, filed or unfiled, that she may have or have had arising out of any known or unknown fact, condition or incident occurring prior to the date of enter into this agreement, including but not limited to those arising out of or in connection with any claims, demand, charges, or complaints, specifically including but not limited to this action, arising out of or in connection with her employment and its cessation and any and all other interactions or relations with Releasees ("Plaintiff's Released Claims"). Plaintiff's Released Claims include, without limiting the generality of the foregoing: any and all claims, demands, causes of actions, obligations, charges, liabilities, attorneys' fees, costs, actual, compensatory and punitive damages, and all claims for any other type of relief relating to, arising out of, or based upon: all claims of harassment, discrimination, and/or retaliation in violation of State or Federal law; all claims for failure to prevent harassment, discrimination, and/or retaliation; any and all claims for failure to engage in the good faith interactive process and/or provide reasonable accommodation; all claims for violation of obligations to provide leave or retaliation for exercising rights to leave; all claims of violation of public policy, including a claim for wrongful and/or constructive termination of employment; all claims based on tort and/or breach of contract, whether written or oral, express or implied, and any covenant of good faith and fair dealing; all claims for unpaid wages, commissions, or other forms of compensation or benefits, including minimum wage, overtime, double time, vacation, associated penalties and/or premiums, and expense reimbursement; all claims for rest or meal periods and associated penalties and/or premiums, and any and all claims for alleged violations of the California Labor Code generally; any claim for unlawful or unfair business practices; all claims for emotional distress; any and all claims which were or could have been asserted by Plaintiff; and all claims generally relating to Plaintiff's employment relationship, any type of relationship, and/or interactions with Releasees and the cessation thereof, including any alleged violation of any federal, state or other governmental statute, regulation, ordinance, or executive order, including without limitation:

- (1) The Civil Rights Acts of 1866, 1964, and 1991, as amended;
- (2) 42 U.S.C. § 1981;
- (3) The California Fair Employment and Housing Act;
- (4) Section 503 of the Rehabilitation Act of 1973;
- (5) The Fair Labor Standards Act (including the Equal Pay Act);
- (6) The California and United States Constitutions;
- (7) The California Labor Code, specifically including, but not limited to the Private Attorneys General Act pursuant to Labor Code § 2699, *et seq.*;
- (8) The California Business & Professions Code;
- (9) The Employee Retirement Income Security Act, as amended;
- (10) The Americans with Disabilities Act;
- (11) The Age Discrimination in Employment Act;
- (12) The Family Medical Leave Act;
- (13) The California Family Rights Act;

- (14) The California Pregnancy Discrimination Act;
- (15) The California Wage Orders;
- (16) The National Labor Relations Act;
- (17) The Immigration Reform and Control Act;
- (18) The California Occupational Safety and Health Act, or the Federal equivalent;
- (19) The Worker Adjustment and Retraining Notification Act; and
- (20) The Families First Coronavirus Response Act.

Plaintiff's Released Claims does not extend to those rights, which as a matter of law cannot be waived. Plaintiff's Released Claims do not extend to claims by Plaintiff that arise after execution of the agreement, for claims by Plaintiff for workers' compensation benefits or unemployment insurance benefits. However, by execution of the agreement, Plaintiff confirms that she has no known injuries that have not been reported that could serve as a basis to file a claim for workers' compensation benefits and that no factual basis exists for a claim for increased compensation under California Labor Code section 132a based upon all facts and circumstances surrounding her former employment with Defendants.

The Gross Settlement Amount does not include the General Release Payment to Plaintiff in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00).

3. Notice to LWDA. Pursuant to California Labor Code § 2699(l)(2), the Parties shall submit to the LWDA a copy of this Agreement at the same time that the Parties submit it to the Court for approval.

4. No Right to Opt Out. The Parties agree that there is no statutory right for any Aggrieved Employee to object, opt out or otherwise exclude themselves from the Settlement.

5. Gross Settlement Amount. Defendants agree to pay, in accordance with the terms set forth herein, the total sum of Ninety-Nine Thousand Five Hundred Dollars and Zero Cents (\$99,500.00) as the non-reversionary gross settlement amount (the "Gross Settlement Amount") in full settlement of the Lawsuit. The Gross Settlement Amount, which represents the total amount payable under this Settlement by Defendants (subject to the Escalator Clause described below), will be allocated as follows:

- a. PAGA Counsel's attorneys' fees and costs request of up to 33 1/3% of the Gross Settlement Amount or Thirty-Three Thousand One Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$33,166.67) ("PAGA Counsel's Fees") and PAGA Counsel's separate request for reasonable litigation costs incurred in this matter ("PAGA Counsel's Costs") not to exceed Sixteen Thousand Dollars and Zero Cents (\$16,000.00). Defendants will not oppose these requests. To the extent that the Court approves less than the amount of attorney's fees and costs that PAGA Counsel requests, any reduced amount shall revert to the PAGA Fund.
- b. Administration costs are estimated not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00) to be paid to the Settlement Administrator ("Administration Costs"), which is a good faith estimate. If the Parties' estimated administration fees are too little, it can be adjusted and shall be paid from the Gross Settlement. If the actual administration fee is less than

the Parties' estimated administration fees, the difference between the actual and estimated administration fees will revert to the PAGA Fund; and

- c. The remainder of the Gross Settlement Amount (the "PAGA Fund") after deducting items (a) and (b) shall be designated as PAGA Penalties to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% paid to the LWDA (the "LWDA PAGA Portion") and 25% paid to the Aggrieved Employees (the "Aggrieved Employees' PAGA Portion") on a pro-rata basis as set forth in Paragraph 7 below.

6. Allocation Adjustment. The Parties agree that should the Court deny approval of the Gross Settlement Amount and/or the Net Settlement Amount, the Parties agree to renegotiate the allocation of funds in good faith in an effort to obtain approval of the Settlement.

7. Allocation and Calculation of the PAGA Penalties. Each Aggrieved Employee 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: $\text{Settlement Payment} = \text{Aggrieved Employees' PAGA Portion} \times [\text{Pay Periods Worked by Individual Aggrieved Employee during the PAGA Period} \div \text{Total Pay Periods Worked by All Aggrieved Employees during the PAGA Period}]$.

8. Escalator Clause: Defendants' best estimate for the number of pay periods at issue for the PAGA Group for the period of March 15, 2022, to August 17, 2023, is approximately 3,800 pay periods. Should the number of pay periods during the PAGA Period increase by more than 10%, the Gross Settlement Amount will increase proportionately over the 10% grace (i.e., meaning if the pay periods increase by 11% the settlement will increase by 1%). However, if the escalator clause is triggered, Defendants may alternatively choose to end the PAGA Period on the date that the increase would otherwise be triggered.

9. Tax Treatment of Settlement Amounts. With regard to settlement payments to Aggrieved Employees, IRS Form 1099s will be issued by the Settlement Administrator, if applicable. IRS Form 1099s are used for payments of miscellaneous income that is not considered wages, such as the penalty payments at issue in this Settlement. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Defendants, their counsel and Plaintiff's and the Aggrieved Employees' counsel are not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of the portion allocated to PAGA Counsel's fees and costs will be reflected in a Form 1099 to PAGA Counsel, who shall assume full responsibility and liability for the payment of taxes due on such payments.

10. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY")

ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

11. PAGA Settlement Payment Procedures.

a. Within fifteen (15) calendar days of the Effective Date, Defendants shall deposit the Gross Settlement Amount or \$99,500.00 with the Settlement Administrator. Within fifteen (15) calendar days of the Effective Date, Defendants shall also provide the Settlement Administrator with a list of all Aggrieved Employees with each listed employee's full name, last known mailing address, last known telephone number, social security number, and the actual number of compensable pay periods worked by them during the PAGA Period. The Settlement Administrator shall run all the addresses of Aggrieved Employees through the United States Postal Service NCOA database to obtain current address information and shall skip trace and re-mail all returned, undelivered mail within ten (10) calendar days of receiving notice that a notice was undeliverable.

b. Within fifteen (15) calendar days from the date the Gross Settlement Amount has been deposited with the Settlement Administrator as well as the information provided in Paragraph 11 (a), the Settlement Administrator shall:

- i. Distribute a total of Twenty-Five percent (25%) of the PAGA Fund to the Aggrieved Employees, along with the Notice of PAGA Representative Action Settlement (attached hereto as **Exhibit B**). Aggrieved Employees shall not be required to make claims to receive their share of the PAGA settlement. The payment checks shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's last known mailing address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. It will be conclusively presumed that an Aggrieved Employee's individual settlement payment check was received if the

payment check has not been returned within thirty (30) calendar days of the original mailing. All uncashed settlement checks shall be redistributed to those Aggrieved Employees who have already cashed their checks based on their pro rata share of the PAGA penalties calculated in accordance with Paragraph 7.

- ii. Distribute a total of Seventy-Five percent (75%) of the PAGA Fund to the LWDA.
- iii. Distribute PAGA counsel's fees and costs, as approved by the Court.
- iv. Distribute payment to itself for services as Settlement Administrator, as approved by the Court.
- v. Distribute General Release Payment to Plaintiff.

c. Settlement Checks issued to Aggrieved Employees pursuant to this Agreement will expire one hundred and eighty (180) calendar days from the date they are mailed by the Settlement Administrator. All money represented by uncashed settlement checks shall be redistributed by the Settlement Administrator to those Aggrieved Employees who have already cashed their checks based on their pro rata share of the PAGA penalties calculated in accordance with Paragraph 7.

d. The Parties and their counsel shall not bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

12. Settlement Administrator. The Settlement Administrator shall be responsible for sending notices, calculating settlement payments, preparing all checks and mailings, and complying with all requirements set forth herein. As noted above, the costs of the Settlement Administrator shall be paid out of the Gross Settlement Amount, and the Parties agree to use ILYM Group, Inc. as the Settlement Administrator.

13. Duties of the Parties Related to Approval. Promptly upon execution of this Agreement, Plaintiff shall file her motion for approval of the proposed Settlement and for the entry of an order approving this Settlement as required by Labor Code section 2699(I). The approval motion will request Court approval of the following: (1) the terms of this Agreement, (2) PAGA Counsel's Fees and PAGA Counsel's Costs, (3) payments to Aggrieved Employees and the LWDA, (4) payment to the Settlement Administrator, and (5) Final Judgment. In conjunction with the approval motion, Plaintiff shall submit a proposed Final Judgment to the Court.

14. Interim Stay of Proceedings. The Parties agree to refrain from further litigation of this matter, except such proceedings necessary to implement and obtain Final Judgment.

15. Invalid without Court Approval. In the event this Agreement is not approved by the Court, it shall be deemed null and void, of no force and effect, and of no probative or evidentiary value, and the Parties hereto represent, warrant, and covenant that it will not be used or referred to for any purpose whatsoever. In the event that the Agreement does not become final for any reason, this Agreement shall be null and void and any order entered by the Court in furtherance thereof

shall be treated as void ab initio. In such a case, the Parties shall return to the status quo as if they had not entered into this Agreement. The Settlement Administrator will be paid by Defendants for its costs through the date it is notified that the Settlement will not proceed.

16. Non-Admission of Wrongdoing. The Parties agree that this Agreement does not constitute an admission by Defendants or any Released Party, of any of the matters alleged in the Lawsuits or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiff, Defendants or the Released Parties.

17. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of this Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Agreement will not constitute a waiver of any other provision.

18. Covenants and Representations. Plaintiff represents and warrants she has not assigned or transferred or purported to assign or transfer, to any person or entity, any claim, right, liability, demand, obligation, expense, action, or causes, or portion thereof, or interest therein, which is or may be subject to this Settlement. Plaintiff acknowledges she has read this Settlement, fully understands her rights, privileges, and duties under the Settlement, and enters into this Settlement freely and voluntarily, and without duress. Plaintiff further acknowledges she had the opportunity to consult with her attorney to explain the terms of this Settlement and the consequences of signing this Settlement.

19. Termination of Settlement. If the Court does not approve the Settlement or does not enter judgment as provided for in this Settlement or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or, except as otherwise set forth herein, if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) calendar days of written notice thereof to elect to terminate the Settlement, in which case the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement.

20. Enforcement. The Parties agree that following entry of the Final Judgment, this Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing jurisdiction of the Lawsuit over all Parties and the Aggrieved Employees to interpret and enforce the terms, conditions, and obligations of the Agreement pursuant to California Code of Civil Procedure section 664.6. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions.

21. Costs and Fees. The Parties shall each bear their own costs, attorneys' fees, expert fees, mediator fees, and other fees incurred in connection with this Settlement, the Lawsuit and Plaintiff's claims, except as otherwise set forth specifically herein.

22. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either Party. This is a fully integrated agreement. No other promises or agreements shall be binding or shall modify this Agreement unless in writing and signed by the Parties.

23. Severability. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement that can be given effect without the invalid provisions or application, and to this end, the provisions of this Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable Released Party.

24. Confidentiality. Plaintiff and Plaintiff's counsel agree that they have not and will not publish the Settlement. In response to any inquiries, Plaintiff will state that "the case was resolved, and it was resolved confidentially." Plaintiff's counsel shall not report the Settlement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the PAGA Group or the Settlement on its website, and shall not contact any reporters or media regarding the Settlement. Despite this provision, Plaintiff's counsel can discuss the Settlement with Plaintiff, the PAGA Group, and in any filings with the Court.

25. No Construction Against the Drafter. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

26. Choice of Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

27. Counterparts. This Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

28. Cooperation. Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

29. Electronic Signature. Each Party specifically agrees that an electronic signature shall have the same force and effect as a signed original of the Agreement, and that the Parties may use

DocuSign, an electronic signature technology, to expedite the execution of this Agreement pursuant to California Civil Code Section 1633.7.

Dated: 1/17/2024 | 4:32 PM PST

DocuSigned by:



ED0389C4276C483

Plaintiff YADIRA GONZALEZ

Dated:

Defendant RV RETAILER SAN DIEGO, LLC

By: _____

Its: _____

Dated:

Defendant BLUE COMPASS RV, LLC f/k/a
RV RETAILER, LLC

By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: 1/17/2024 | 4:35 PM PST **TUNYAN LAW, APC**

DocuSigned by:

By: _____



Lilit Tunyan

Artur Tunyan

Attorneys for Plaintiff YADIRA GONZALEZ,
and Aggrieved Employees

Dated:

FISHER & PHILIPS, LLP

By: _____

Boris Sorsher

Harrison M. Zator

Attorneys for Defendants RV RETAILER SAN
DIEGO, LLC; and BLUE COMPASS RV, LLC
f/k/a RV RETAILER, LLC

DocuSign, an electronic signature technology, to expedite the execution of this Agreement pursuant to California Civil Code Section 1633.7.

Dated:

Plaintiff YADIRA GONZALEZ

Dated: 01/17/2024



Defendant RV RETAILER SAN DIEGO, LLC
By: Tim Benter
Its: Secretary

Dated: 01/17/2024



Defendant BLUE COMPASS RV, LLC f/k/a
RV RETAILER, LLC
By: Tim Benter
Its: Vice President

APPROVED AS TO FORM AND CONTENT:

Dated:

TUNYAN LAW, APC

By: _____
Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff YADIRA GONZALEZ,
and Aggrieved Employees

Dated: January 17, 2024

FISHER & PHILIPS, LLP

By: 

Boris Sorsher
Harrison M. Zator

Attorneys for Defendants RV RETAILER SAN
DIEGO, LLC; and BLUE COMPASS RV, LLC
f/k/a RV RETAILER, LLC

Exhibit “A”



TUNYAN LAW

Lilit Tunyan, Esq.

1336 Rossmoyne Avenue,
Glendale, CA 91207
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

March 15, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Agent for Service of Process for
RV Retailer San Diego, LLC
CT Corporation System
330 N Brand Blvd.
Glendale, CA 91203

VIA CERTIFIED MAIL

Return Receipt Requested

RV Retailer San Diego, LLC
100 SE 3rd Ave, Suite 1850
Fort Lauderdale, FL 33394

VIA CERTIFIED MAIL

Return Receipt Requested

Agent for Service of Process for
RV Retailer, LLC
Blue Compass RV, LLC
CT Corporation System
1200 South Pine Island Road
Plantation, FL 33324

VIA CERTIFIED MAIL

Return Receipt Requested

RV Retailer San Diego, LLC
RV Retailer, LLC
Blue Compass RV, LLC
301 East Las Olas Blvd, Suite 700
Fort Lauderdale, FL 33301

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: *Yadira Gonzalez v. RV Retailer San Diego, LLC, et al.*

To Whom It May Concern:

Please be advised that my office has been retained by Yadira Gonzalez (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against her former employers RV Retailer San Diego, LLC, RV Retailer, LLC, Blue Compass RV, LLC (“Defendants”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to Plaintiff and all of Defendants’ aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendants in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendants suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendants

Defendants own and operate an industry, business, and establishment within the State of California, including Riverside County. As such, Defendants are subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendants as a detailer from approximately October 2017 to October 28, 2022, primarily in Riverside County. Defendants classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendants, Plaintiff typically worked 5 days per week, and between 8 to 10 hours each workday.

Throughout Plaintiff's employment, Defendants committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendants maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked (including minimum wages, straight time wages and overtime wages). Throughout the statutory period, Defendants also maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work “off-the-clock”. Defendants required Plaintiff and the Aggrieved Employees to work through their meal periods requiring them to keep their cell phones turned out during meal periods and to receive and respond to work related calls and text messages. Defendants also required Plaintiff and the Aggrieved Employees to interrupt their meal periods and return to work as soon as they receive a call or a text message from their supervisors. Plaintiff and the Aggrieved Employees were also required to use their personal cellular telephones for work purposes at home after their scheduled work time to communicate with Defendants regarding their work schedule changes and work assignments. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. In doing so, Defendants also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendants wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours

of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendants did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendants did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees. Plaintiff and the Aggrieved Employees would often times miss their meal periods, have interrupted, late or short meal periods.

Defendants required Plaintiff and the Aggrieved Employees to work through their meal periods requiring them to keep their cell phones turned out during meal periods and to receive and respond to work related calls and text messages. Defendants also required Plaintiff and the Aggrieved Employees to interrupt their meal periods and return to work as soon as they receive a call or a text message from their supervisors. Additionally, meal periods were cut short by the time taken from Plaintiff and the Aggrieved Employees to walk to the meal break area and back to their workstation. Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit periods of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest periods. Each failure to authorize rest periods as so required is itself a violation of California's rest period laws.

Defendants, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendants did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendants have

adequate policies or practices regarding the timing of rest periods. Plaintiff and the Aggrieved Employees would mostly miss their first and second rest periods or have interrupted or short rest periods. Defendants also required Plaintiff and the Aggrieved Employees to work through their rest periods requiring them to keep their cell phones turned out during rest periods and to receive and respond to work related calls and text messages. Defendants required Plaintiff and the Aggrieved Employees to interrupt their rest periods and return to work as soon as they receive a call or a text message from their supervisors. Accordingly, Defendants' policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendants, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendants' failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have

also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants without reimbursement, which included the purchase and maintenance of the uniforms. Further, Plaintiff and the Aggrieved Employees were required to use their cellular telephones for work purposes to download and use a timekeeping application for recording their time worked for Defendants and receive work related text messages and calls regarding their schedule changes or work assignments. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendants, and Defendants have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the

wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." Lab. Code § 226(e)(1).

Defendants intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, the failure to list the true net wages earned, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked. Additionally, Defendants failed to provide the employer entity correct address and names on the wage statement and included the paid time off (PTO) in the number of hours worked.

As a result of Defendants violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Here, Defendants have not designated regular pay dates and often times issued wages after the 26th day of the month for the labor performed between the 1st and 15th days and after the 10th day of the following month for the labor performed between the 16th and the last day of the month as well as more than seven calendar days following the close of the payroll period.

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendants systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all wages for all hours worked. As a result, Defendants owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Provide Written Notice of Available Paid Sick Leave

Labor Code § 246 (i) requires employers to provide an employee with written notice that sets forth the amount of paid sick leave available.

During the statutory period, Defendants maintained a policy and practice of failing to provide written notice of accrued paid sick leave. On information and belief, Defendants' failure to provide an employee with written notice that sets forth the amount of paid sick leave available was not a single, isolated incident, but was instead part of Defendants' policy and practice that applied to the Aggrieved Employees.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to provide any information on accrued sick leave.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendants violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code § 227.3 by failing to pay all vacation wages at termination;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 226 by failing to provide accurate itemized wage statements; and
9. Labor Code § 204 by failing to pay all earned wages two times per month.
10. Labor Code § 246 (i) by failing to provide an employee with written notice that sets forth the amount of paid sick leave available.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendants on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendants, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Tunyan".

Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC



TUNYAN LAW

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September 8, 2023

VIA ONLINE SUBMISSION

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**AMENDED NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: *Yadira Gonzalez v. RV Retailer San Diego, LLC, et al.*

To Whom It May Concern:

Please be advised that my office has been retained by Yadira Gonzalez ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against her former employers RV Retailer San Diego, LLC, RV Retailer, LLC, Blue Compass RV, LLC ("Defendants"). The purpose of this amended letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to Plaintiff and all of Defendants' aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendants in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Plaintiff and the Aggrieved Employees of Defendants suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendants

Defendants own and operate an industry, business, and establishment within the State of California, including Riverside County. As such, Defendants are subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendants as a detailer from approximately October 2017 to October 28, 2022, primarily in Riverside County. Defendants classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendants, Plaintiff typically worked 5 days per week, and between 8 to 10 hours each workday.

Throughout Plaintiff's employment, Defendants committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their

regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendants maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked (including minimum wages, straight time wages and overtime wages). Throughout the statutory period, Defendants also maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work "off-the-clock". Defendants required Plaintiff and the Aggrieved Employees to work through their meal periods requiring them to keep their cell phones turned out during meal periods and to receive and respond to work related calls and text messages. Defendants also required Plaintiff and the Aggrieved Employees to interrupt their meal periods and return to work as soon as they receive a call or a text message from their supervisors. Plaintiff and the Aggrieved Employees were also required to use their personal cellular telephones for work purposes at home after their scheduled work time to communicate with Defendants regarding their work schedule changes and work assignments. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. In doing so, Defendants also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendants wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendants did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendants did not have adequate written policies or practices providing

meal periods for Plaintiff and the Aggrieved Employees. Plaintiff and the Aggrieved Employees would often times miss their meal periods, have interrupted, late or short meal periods. Defendants required Plaintiff and the Aggrieved Employees to work through their meal periods requiring them to keep their cell phones turned out during meal periods and to receive and respond to work related calls and text messages. Defendants also required Plaintiff and the Aggrieved Employees to interrupt their meal periods and return to work as soon as they receive a call or a text message from their supervisors. Additionally, meal periods were cut short by the time taken from Plaintiff and the Aggrieved Employees to walk to the meal break area and back to their workstation. Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit periods of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest periods. Each failure to authorize rest periods as so required is itself a violation of California's rest period laws.

Defendants, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendants did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the timing of rest periods. Plaintiff and the Aggrieved Employees would mostly miss their first and second rest periods or have interrupted or short rest periods. Defendants also required Plaintiff and the Aggrieved Employees to work through their rest periods requiring them to keep their cell phones turned out during rest periods and to receive and respond to work related calls and text messages. Defendants required Plaintiff and the

Aggrieved Employees to interrupt their rest periods and return to work as soon as they receive a call or a text message from their supervisors. Accordingly, Defendants' policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendants, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendants' failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants without reimbursement, which included the purchase and maintenance of the uniforms. Further, Plaintiff and the Aggrieved Employees were required to use their cellular telephones for work purposes to download and use a timekeeping application for recording their time worked for Defendants and receive work related text messages and calls regarding their schedule changes or work assignments. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendants, and Defendants have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

Defendants intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, the failure to list the true net wages earned, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked. Additionally, Defendants failed to provide the employer entity correct address and names on the wage statement and included the paid time off (PTO) in the number of hours worked.

As a result of Defendants violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Here, Defendants have not designated regular pay dates and often times issued wages after the 26th day of the month for the labor performed between the 1st and 15th days and after the 10th day of the following month for the labor performed between the 16th and the last day of the month as well as more than seven calendar days following the close of the payroll period.

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendants systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all wages for all hours worked. As a result, Defendants owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Provide Written Notice of Available Paid Sick Leave

Labor Code § 246 (i) requires employers to provide an employee with written notice that sets forth the amount of paid sick leave available.

During the statutory period, Defendants maintained a policy and practice of failing to provide written notice of accrued paid sick leave. On information and belief, Defendants' failure to provide an employee with written notice that sets forth the amount of paid sick leave available

was not a single, isolated incident, but was instead part of Defendants' policy and practice that applied to the Aggrieved Employees.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to provide any information on accrued sick leave.

Failure to Provide Notice of a Potential COVID-19 Workplace Exposure

Labor Code § 6409.6 provides that if an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer shall take all of the following actions within one business day of the notice of potential exposure:

- (1) Provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual within the infectious period that they may have been exposed to COVID-19 in a manner the employer normally uses to communicate employment-related information.
- (2) Provide a written notice to the exclusive representative, if any, of employees under paragraph (1).
- (3) Provide all employees who may have been exposed and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws.
- (4) Notify all employees, and the employers of subcontracted employees and the exclusive representative, if any, on the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control.

Despite the fact that, based on information and belief, Defendants were notified of employees who were infected with COVID-2019 and other employees were exposed to COVID-2019, Defendants failed to provide any notice to Plaintiff and Aggrieved Employees about exposure to COVID-2019 and failed to take necessary measures to prevent exposure of Aggrieved Employees to COVID-2019.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendants violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;

3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code § 227.3 by failing to pay all vacation wages at termination;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 226 by failing to provide accurate itemized wage statements.
9. Labor Code § 204 by failing to pay all earned wages two times per month.
10. Labor Code § 246 (i) by failing to provide an employee with written notice that sets forth the amount of paid sick leave available; and
11. Labor Code § 6409.6 for failure to provide notice of a potential COVID-19 workplace exposure

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendants on notice by mailing a certified copy of this correspondence to its corporate address and counsel for Defendants, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendants, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC

Exhibit “B”

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 $\times$ [Pay Periods Worked by Individual Aggrieved Employee during the PAGA Period $\div$ 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 required¹. 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).

Exhibit “2”

Date	Description	Rate (\$)
3/16/2023	PAGA notice submission fee to LWDA	75
3/16/2023	PAGA letters (4) certified mail costs to Defendants	36.96
3/16/2023	Riverside Court Complaint E-filing and complex designation fees	1496.73
4/8/2023	Certified mails costs for notice of Case Management Order and Conference to Defendants	13.7
3/31/2023	Court e-filing fee for filing Proof of Service of Complaint and Summons	6.85
3/29/2023	Process service fee for service of complaint to two defendants	219.74
3/30/2023	Process service fee for service of complaint to the third defendant	99.74
5/23/2023	Court e-filing fee for filing First Amended Complaint	6.85
7/26/2023	Mediation fee paid to Judicate West	8375
9/8/2023	Court e-filing fee for joint Case Management Statement filing	6.85
10/4/2023	Court e-filing fee for filing Request for dismissal of Plaintiff's class and individual claims	6.85
10/6/2023	Court e-filing fee for re-filing corrected Proof of Service for Request for dismissal of class claims	6.85
10/9/2023	Court e-filing fee for filing stipulation and order for leave to file Second Amended Complaint	6.85
10/10/2023	Court fee for filing stipulation and order for leave to file Second Amended Complaint	20
10/11/2023	Court e-filing fee for filing Second Amended Complaint	6.85
10/10/2023	Expert fee for exposure analysis	2125
10/20/2023	Court filing fee for filing PAGA settlement approval motion	68.5
10/23/2023	Court e-filing fee for re-filing POS and proposed order granting PAGA settlement approval	6.85
10/24/2023	Court e-filing fee for re-filing Proposed Order approving PAGA settlement	6.85
11/2/2023	Court e-filing fee for filing joint Case Management Conference Statament	6.85
1/23/2024	Court e-filing fee for re-filing PAGA settlement approval motion per CMO	68.5
TOTAL COSTS		12,667.37

Exhibit “3”

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I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 535 N Brand Boulevard, Suite 285, Glendale, California 91203. On January 22, 2024, I served the foregoing document described as:

Boris Sorsher
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Harrison M. Zator
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Dorothy Wang
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Facsimile: (949) 851-0152

[✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 22, 2024 at Glendale, California.


Signature