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8 SERVICES, LLC and COX AUTOMOTIVE
MOBILITY SOLUTIONS, INC.

9 (Additional Counsel Information on Following Page)

10
11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA
13

14 SAMNANG TOUCH, as an individual
15 and on behalf of all others similarly
16 situated,

17 Plaintiff,

18 vs.

19 COX AUTOMOTIVE CORP SVCS.,
20 LLC, a limited liability company; COX
21 AUTOMOTIVE MOBILITY
22 SOLUTIONS, INC., a corporation; and
DOES 1 through 50, inclusive,

23 Defendants.
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27
28

Case No. 2:23-cv-01945-TLN-CSK

Assigned to: Hon. Troy L. Nunley

**STIPULATION OF CLASS
SETTLEMENT AND RELEASE**

Complaint Filed: May 19, 2023

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1 This Stipulation of Class Settlement and Release (“Stipulation of Settlement”
2 or “Settlement Agreement”) is made and entered into by and between Plaintiff
3 Samnang Touch (“Plaintiff” or “Class Representative”) and Cox Automotive
4 Corporate Services, LLC and Cox Automotive Mobility Solutions, Inc.
5 (“Defendants” or “Cox”), and is subject to the terms and conditions herein and the
6 approval of the Court. Plaintiff and Cox are referenced collectively herein as “the
7 Parties.”

8 **BACKGROUND AND RECITALS**

9 1. On or about May 19, 2023, Plaintiff Samnang Touch, filed a class
10 action (“the Lawsuit”) in the Superior Court for the County of San Joaquin, entitled
11 *Samnang Touch v. Cox Automotive Corporate Services, LLC, et al.* The complaint
12 for the Lawsuit alleged claims arising from a central allegation that Cox provided
13 inaccurate wage statements to its employees. Plaintiff filed a representative
14 complaint to under the Labor Code Private Attorneys General Act (“PAGA”). Cox
15 filed a motion to consolidate the PAGA and class actions, which the Superior Court
16 granted on September 8, 2023. Cox subsequently removed the action to the United
17 States District Court for the Eastern District of California and is currently assigned
18 Case No. 2:23-cv-01945-TLN-CSK.

19 2. On March 12, 2024, the parties mediated the Lawsuit before mediator
20 Steve Rottman. The Parties agreed to settle a wage statement claim asserting that
21 approximately 150 employees received approximately 444 wage statements that
22 allegedly reflected an inaccurate total of hours worked (“the Released Claims”).
23 The parties did **not**, however, agree to settle the remaining wage statement claim,
24 which asserted that all Cox’s wage statements failed to accurately list the name of
25 the “employer”.

26 3. Accordingly, for purposes of this Settlement Agreement, the
27 “Settlement Class” shall consist of all “Class Members” who fail to opt out of this
28 Settlement Agreement. “Class Members” are defined as:

1 “Current and former California non-exempt employees of Cox
2 Automotive Corporate Services, LLC who, after May 19, 2022,
3 received wage statements showing a ‘total hours’ figure that did not
4 match the hours worked in the pay period.”

5 The “Class Period” for the resolved wage statement claim is defined as the period of
6 time from May 19, 2022, through July 7, 2023.

7 4. For purposes of settling the Lawsuit, the Parties conditionally stipulate
8 and agree that the requisites for establishing class certification with respect to the
9 Settlement Class have been met and are met, and therefore, stipulate to class
10 certification. More specifically, the Parties conditionally stipulate and agree that,
11 for the Settlement Class:

- 12 a. The number of Class Members is so numerous as to make it
13 impracticable to join all Class Members.
- 14 b. There is an ascertainable class.
- 15 c. There are common questions of law and fact.
- 16 d. Plaintiff’s claims are typical of the claims of the members of the
17 Settlement Class.
- 18 e. All of the Plaintiff’s firms listed in the caption of this document
19 shall collectively be deemed “Class Counsel,” who the parties agree
20 will fairly and adequately protect the interests of the Settlement Class.
- 21 f. Plaintiff Samnang Touch should be appointed as the
22 representative of the Settlement Class and will fairly and adequately
23 represent the interests of the Settlement Class.
- 24 g. The prosecution of separate actions by individual members of the
25 Settlement Class would create the risk of inconsistent or varying
26 adjudications, which would establish incompatible standards of
27 conduct.

1 h. Questions of law and fact common to the members of the
2 Settlement Class predominate over questions affecting individual
3 members in the Settlement Class and a class action is superior to other
4 available means for the fair and efficient adjudication of the controversy.

5 5. Cox denies any liability or wrongdoing of any kind associated with the
6 any of the claims alleged in the Complaint and further denies that, for any purpose
7 other than settling the Lawsuit in part, this action is appropriate for class treatment.
8 Cox contends, among other things, that it has complied at all times with the
9 California Labor Code, and all applicable California law.

10 6. Plaintiff believes that he has filed a meritorious action and that class
11 certification is appropriate of the claims asserted in the operative *Touch* Complaint.
12 Plaintiff contends that Cox violated California's wage-and-hour laws and that this
13 case is appropriate for class certification as the requisites for class certification can
14 be satisfied in this case.

15 7. It is the desire of the Parties to fully, finally, and forever settle,
16 compromise, and discharge all disputes and claims which exist between them arising
17 from the factual allegations that underlie the Lawsuit concerning the failure to
18 provide accurate wage statements based on the allegation that the Class Members
19 received wage statements showing a 'total hours' figure that did not match the hours
20 worked in the pay period and derivative claims for penalties. In order to achieve a
21 full and complete release of Cox (and the "Releasees" as defined in Paragraph 8) of
22 such disputes and claims, Plaintiff and Class Members (which includes any legal
23 heirs and/or successors-in-interest of each Class Member who receive Notice),
24 through execution of the Stipulation of Settlement, acknowledge that this Stipulation
25 of Settlement is intended to include in its effect the entirety of the Released Class
26 Claims, as more fully described in Paragraph 21 of this Stipulation of Settlement.

27 8. It is the intention of the Parties that this Stipulation of Settlement shall
28 constitute a full and complete settlement and release of all claims described in

Paragraph 21 of this Stipulation of Settlement. This release shall include in its effect not only Cox, but also its respective affiliates, subsidiaries, parent companies, predecessor entities (i.e., companies it acquired during the class period), related companies, partners, officers, directors, managers, servants, agents, employees, former employees, representatives, and attorneys, past or present, and all persons acting under, by, through, or in concert with any of them (collectively, the “Releasees”).

TERMS OF SETTLEMENT

9. Overview of Payment Structure. This settlement is made on a non-reversionary basis. This settlement shall consist of a Gross Fund Value which, in turn, is comprised of a Net Fund Value for the class, an award of attorney’s fees and costs, an award of administration expenses, enhancement award to Plaintiff for his service as a class representative, and a payment to the Labor Workforce Development Agency (“LWDA”) to extinguish any PAGA claims arising within the scope of the release. Further specifics are provided below.

10. Gross Fund Value. Cox shall pay the gross sum of ONE HUNDRED FIFTY THOUSAND DOLLARS (“\$150,000”) (the “Gross Fund Value” or “GFV”) to fund the settlement of this action. Payments by Cox pursuant to this Settlement Agreement shall settle the wage statement claim about inaccurate hours as outlined above. The settlement payments are not being made for any other purpose and will not be construed as compensation for purposes of determining eligibility for any health and welfare benefits or unemployment compensation. Cox shall be responsible for paying any appropriate and lawfully required employer payroll taxes arising from the portion of the class member settlement payments attributable to wages.

11. Amounts Paid from the Gross Fund Value:

a. Attorneys’ Fees and Costs: Subject to review and final approval by the Court, Cox agrees that Class Counsel may apply for a total of one-third of the

1 Gross Fund Value (currently FIFTY THOUSAND DOLLARS (\$50,000)) for
2 reasonable attorneys' fees, and an additional amount to reimburse actual litigation
3 costs billed to the Plaintiff, not to exceed \$20,000. Any award granted shall be
4 taken from the Gross Fund Value. If a lower amount is awarded, the difference will
5 be allocated to the Net Fund Value.

6 b. Enhancement Award: In further consideration for settling this
7 matter, Cox agrees that Class Counsel may apply for a class member enhancement
8 for Plaintiff to compensate him for his time, risk and effort on behalf of the class.
9 The enhancement award is in addition to the claim share to which Plaintiff is
10 otherwise entitled as a Qualified Claimant. Cox agrees that Plaintiff may apply for
11 enhancement award not to exceed FIVE THOUSAND DOLLARS (\$5,000). Any
12 award granted shall be taken from the Gross Fund Value. If a lower amount is
13 awarded, the difference will be allocated to the Net Fund Value.

14 c. Administration Costs: Costs required to administer the
15 settlement will also be paid from the GFV. The Parties have agreed to use Xpand
16 Legal as claims administrator for the class with an expectation that the total amount
17 charged by the administrator which is estimated to be SIX THOUSAND FIVE
18 HUNDRED DOLLARS (\$6,500). The administration duties shall include, without
19 limitation, mailing Notices, calculating awards, processing requests for exclusion
20 and objections, performing necessary skip traces on Notices returned as
21 undeliverable, mailing Class Member settlement checks, issuing any required tax
22 reporting forms, and providing weekly status reports to Counsel for the Parties,
23 among other tasks set forth in this Stipulation. To the extent the administration
24 costs are lower than anticipated, the difference will be allocated to the Net Fund
25 Value.

26 d. PAGA Payment. The parties agree that FIFTEEN THOUSAND
27 DOLLARS (\$15,000) of the GFV should be allocated to the state's 75% share of
28 PAGA penalties. FIVE THOUSAND DOLLARS (\$5,000) will be attributable to

1 the PAGA claim and will be distributed to the class members on a proportional basis
2 based on how many of the 444 allegedly defective wage statements they received.
3 Class Members will receive this payment whether or not they opt out of the class
4 settlement because there will be no opt out ability for resolution of the PAGA claim.

5 e. Remaining Net Fund Value for Class: After all payments of
6 attorney's fees and costs, class representative enhancements, administrative costs,
7 and PAGA payments are deducted from the Gross Fund Value, the remaining
8 portion, the "Net Fund Value" or "NFV" shall be distributed to class members who
9 do not affirmatively exclude themselves from the settlement, as discussed below.

10 f. "Opt Out" Process for the Net Fund Value: Class Members shall
11 receive notice of the action and may exclude themselves or "opt out" if they do not
12 want to participate in the settlement. Class Members who do not "opt out" shall be
13 deemed to have made a settlement claim. In consideration for settlement and a release
14 of all claims of the Settlement Class against Cox, each Class Member who does not
15 timely "opt out" ("Qualified Claimant") will receive a share of the NFV.

16 g. Formula to Distribute the Net Fund Value. The Net Fund Value,
17 which should be approximately FIFTY THREE THOUSAND FIVE HUNDRED
18 DOLLARS (\$53,500) if all requested attorney's fees, costs, PAGA-related
19 payments, and enhancements were approved, will be distributed proportionally
20 based on the number of the 444 allegedly defective wage statements each Class
21 Member received (i.e., approximately \$100 per wage statement).

22 12. Settlement Date: The settlement embodied in this Stipulation of
23 Settlement shall go into effect upon the Court's approval of this Stipulation of
24 Settlement.

25 13. Funding and Payout of Settlement Funds

26 a. Payment Procedure to Claims Administrator: No later than ten
27 (10) business days after the "effective date" of final approval of the settlement, Cox
28 will issue to the Claims Administrator payment of the Gross Fund Value. The

1 effective date shall be the date of final approval if no objections are filed to the
2 settlement. If objections are filed and overruled, and no appeal is taken of the final
3 approval order, then the effective date of final approval shall be thirty (30) days
4 after the Court enters final approval. If an appeal is taken from the Court's
5 overruling of objections to the settlement, then the effective date of final approval
6 shall be twenty (20) days after the appeal is withdrawn or after an appellate decision
7 affirming the final approval decision becomes final. No money will be distributed
8 unless and until the effective date of final approval occurs.

9 b. The Claims Administrator will mail settlement checks to
10 Qualified Claimants no later than ten (10) business days after receiving payment
11 from Cox. Payments will be made at this same time for attorney's fees, costs,
12 PAGA distribution, and the class representative enhancement. Qualified Claimants
13 shall have 180 days after mailing by the Claims Administrator to cash their
14 settlement checks. If Qualified Claimants do not cash their checks within the 180
15 day period, those checks will become void and the Claims Administrator will stop
16 payment on the uncashed checks. In such event, those Qualified Claimants will be
17 deemed to have waived irrevocably any right in or claim to a settlement payment.

18 c. Should there remain any residual from the Gross Fund Value after
19 all payments are made under this Settlement Agreement, for example, if any
20 settlement checks remain uncashed more than 180 calendar days after mailing, the
21 Claims Administrator will pay the funds represented by such un-redeemed checks to
22 the California State Controller's Office in the name of the Qualified Claimant.

23 d. Tax Treatment of Settlement Payments: The Parties agree that 0% of
24 the amount distributed to each Qualified Claimant will be considered wages and
25 100% will be considered penalties. Although the parties believe that there are no
26 withholding taxes required on these payment, to the extent there are, Cox shall be
27 responsible for paying all employer-paid withholding and payroll taxes and similar
28 expenses (including state and federal income taxes, social security contributions and

1 unemployment taxes) on the portion of the settlement where employer-side payroll
2 taxes are required by law. Cox will be responsible for all required withholdings, if
3 any. Each Qualified Claimant also will be responsible for correctly characterizing
4 this compensation for tax purposes and for payment of any personal income taxes
5 owing on said amount.

6 e. Resolution of Disputes Relating to Amounts Owed to a
7 Claimant: If a Qualified Claimant timely disputes Cox's records as to the proper
8 size of his or her claim, the Parties' counsel will make a good faith effort to resolve
9 the dispute informally. If counsel for the Parties cannot agree, the dispute shall be
10 submitted to the Court, who shall examine the records in an attempt to resolve the
11 dispute. Cox's records shall control unless Cox expressly agrees otherwise in an
12 individual case. In any event, counsel will make every effort to resolve any such
13 disputes without Court intervention prior to final approval of this Settlement.

14 **NOTICE TO THE CLASS**

15 14. The Parties agree that within ten (10) business days after preliminary
16 approval of this settlement, Cox will provide to the Claims Administrator all of the
17 following information about each Class Member in Excel format ("Class Data
18 List"): (1) name, (2) last known home address and home telephone number,
19 (3) Social Security number, and (4) the number of allegedly defective wage
20 statements each of the Class Members received.

21 15. Within ten (10) business days after receipt of the "Class Data List," the
22 Claims Administrator will send Class Members, by first-class mail to their last
23 known address, the Court-approved Notice of Pendency of Class Action ("Notice"),
24 in the form which will be attached hereto as Exhibit "A." The Notice will also
25 include Cox's calculation of each Class Member's payment under this settlement
26 and the number of allegedly defective wage statements the employee received.

CLAIMS ADMINISTRATION PROCESS

16. Class Members will have forty-five (45) days from the date of the Notices to postmark their objections or written requests for exclusion to the Claims Administrator. To be valid, requests for exclusion must comply with the instructions in the Notice and must state, in effect, that the Class Member does not wish to participate in the settlement of this action. In addition, any request must include the Class Member's first and last name, signature, address, phone number, and last four digits of social security number for verification purposes. A Class Member who excludes himself or herself from the settlement shall lose standing to object. The Claims Administrator will perform skip-traces on returned mail and re-mail the Notice to an updated address (if any) as soon as possible upon return of the undeliverable Notice, but no later than ten (10) days of receiving notice that a Notice was undeliverable. It is the intent of the Parties that reasonable means be used to locate Class Members since all Class Members who do not request exclusion are entitled to receive their proportionate share of the NFV.

17. Within ten (10) days after receipt by the Claims Administrator of each timely-submitted request for exclusion, the Claims Administrator will send a deficiency notice to the Class Members for any irregularities in any request for exclusion (such as failure to sign or include last four digits of Social Security Number). The deficiency notice will provide the Class Members no more than ten (10) days from the mailing of the deficiency notice to postmark a written response to cure all deficiencies. The failure of a Class Member to cure all deficiencies in a timely manner shall invalidate a request for exclusion and will not be subject to cure.

18. Cox, with the Class Data List, will provide the Claims Administrator an Excel spreadsheet that the Claims Administrator will use to calculate each Class Member's share of the NFV based on information contained in its HRIS systems. The Claims Administrator will certify jointly which request for exclusion requests,

1 if any, were timely postmarked. The Claims Administrator shall be responsible for
2 calculating the payments, issuing the payments and any required tax reporting
3 forms, and for communicating this information to Cox and Class Counsel. Upon
4 completion of its calculation of payments, the Claims Administrator shall provide
5 Plaintiff and Cox with a report listing the amount of all payments to be made to each
6 Qualified Claimant. Proof of payment will be filed with the Court and provided to
7 the Parties' counsel.

8 19. To the extent any Class Members properly requests exclusion from the
9 settlement, their unclaimed portion shall effectively be reallocated to the NFV based
10 on the formula used to calculate individual payments to Qualified Claimants.

11 **RIGHT TO RESCISSION IN THE EVENT OF EXCESS OPT-OUTS**

12 20. Notwithstanding any other provision of this Stipulation of Settlement,
13 Cox shall retain the right, in the exercise of its sole discretion, to nullify the
14 settlement within thirty (30) days of expiration of the opt-out deadline, if thirty (30)
15 or more of the Class Members opt out of the settlement. All signatories and their
16 counsel must not encourage opt-outs. The Parties specifically agree not to solicit
17 opt-outs, directly or indirectly, through any means. Objective statements to Class
18 Members who call Class Counsel with inquiries regarding the settlement, or the
19 exercise of Class Counsel's ethical obligations, shall not be deemed a violation of
20 the prohibitions contained herein. In the event of such a rescission, no party may
21 use the fact that the Parties agreed to settle this case as evidence of Cox's liability in
22 this Lawsuit or the lack thereof. If Cox exercises its right to rescind the settlement it
23 will be solely responsible for the Claims Administrator's costs incurred up to that
24 date.

25 **RELEASE BY THE CLASS OF RELEASED CLASS CLAIMS**

26 21. Upon final approval by the Court and Cox's funding of the GFV, the
27 Settlement Class and each Class Member who has not submitted a timely and valid
28

1 request for exclusion will release Cox and the Releasees from the Released Class
2 Claims as follows:

3 Each member of the Settlement Class, regardless of whether
4 that member submitted a timely claim, releases Cox and the
5 Releasees from any and all claims, debts, liabilities,
6 demands, obligations, guarantees, costs, expenses,
7 attorney's fees, damages, action or causes of action
8 contingent or accrued for, which would reasonably arise
9 from the allegation that Cox violated Labor Code Section
10 226(a)(2) as to the 444 wage statements Cox has identified
11 where the total hours figure was greater than the hours
12 worked in the pay period. It will not impact the viability of
13 claims that Cox failed to list an accurate employer name on
14 wage statements, except with respect to the specific 444
15 wage statements on which Cox is making payments under
16 this settlement agreement. The effective date of the release
will run from on May 19, 2022, through July 7, 2023, the
date that Cox implemented the fix on its wage statements
with respect to the total hours worked. Plaintiff also agrees
that he will be barred from further pursuing the theory under
Labor Code § 226(a)(2) that Cox provided wage statements
that inaccurately listed hours worked to him and the
remaining 150 individuals receiving settlement payments
within this lawsuit.

16 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

17 22. The Parties shall promptly submit this Stipulation of Settlement to the
18 Court in support of a request for preliminary approval and determination by the
19 Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of
20 this Stipulation of Settlement, the Parties shall apply to the Court for the entry of a
21 preliminary order, substantially in the form attached hereto as Exhibit "B," which
22 would accomplish the following:

23 a. Scheduling a final fairness hearing on the question of whether the
24 proposed settlement, the Class Representatives' enhancement awards, and the
25 requested attorneys' fees and costs should be finally approved as fair, reasonable, and
26 adequate as to the Class Members;

27 b. Certifying a Settlement Class for all claims;
28

- 1 c. Certifying this action under California law as a class action for
2 purposes of settlement;
- 3 d. Approving as to form and content the proposed Notice;
- 4 e. Directing the mailing of the Notice, by first-class mail, to the Class
5 Members;
- 6 f. Preliminarily approving the settlement subject only to the
7 objections of Class Members and final review by the Court; and,
- 8 g. Preliminarily approving the use of a mutually agreed Claims
9 Administrator who has provided a bid for \$6,500.

10 **PARTIES' AUTHORITY**

11 23. The signatories hereto hereby represent that they are fully authorized to
12 enter into this Stipulation of Settlement and bind the Parties hereto to the terms and
13 conditions hereof.

14 **MUTUAL FULL COOPERATION**

15 24. The Parties agree fully to cooperate with each other to accomplish the
16 terms of this Stipulation of Settlement, including but not limited to, execution of
17 such documents and to take such other action as may reasonably be necessary to
18 implement the terms of this Stipulation of Settlement. The Parties to this Stipulation
19 of Settlement shall use their best efforts, including all efforts contemplated by this
20 Stipulation of Settlement and any other efforts that may become necessary by order
21 of the Court, or otherwise, to effectuate this Stipulation of Settlement and the terms
22 set forth herein. As soon as practicable after execution of this Stipulation of
23 Settlement, Class Counsel shall, with the assistance and cooperation of Cox and its
24 counsel, take all necessary steps to secure the Court's final approval of this
25 Stipulation of Settlement.

26 **NO PRIOR ASSIGNMENTS**

27 25. The Parties hereto represent, covenant, and warrant that they have not
28 directly or indirectly, assigned, transferred, encumbered, or purported to assign,

1 transfer, or encumber to any person or entity any portion of any liability, claim,
2 demand, action, cause of action, or rights herein released and discharged except as
3 set forth herein.

4 **NO ADMISSION**

5 26. Nothing contained herein, nor the consummation of this Stipulation of
6 Settlement, is to be construed or deemed an admission of liability, culpability,
7 negligence, or wrongdoing on the part of Cox. Cox specifically denies any liability.
8 Each of the Parties hereto has entered into this Stipulation of Settlement with the
9 intention to avoid further disputes and litigation with the attendant inconvenience
10 and expenses.

11 **PUBLICITY**

12 27. Neither Plaintiff nor Class Counsel will publicize the Settlement in any
13 way prior to preliminary approval. This provision shall not prohibit Class Counsel
14 from communicating with members of the Class.

15 **NO RETALIATION**

16 28. Cox agrees that there will be no retaliation, discrimination or adverse
17 employment action against the Plaintiff or any member of the Settlement Class as a
18 result of this Lawsuit, the Settlement or their participation in this Lawsuit or
19 Settlement.

20 **CONSTRUCTION**

21 29. The Parties hereto agree that the terms and conditions of this
22 Stipulation of Settlement are the result of lengthy, intensive arms-length
23 negotiations between the Parties, and that this Stipulation of Settlement shall not be
24 construed in favor of or against any party by reason of the extent to which any party
25 or his, her, or its counsel participated in the drafting of this Stipulation of
26 Settlement.

1 **CAPTIONS AND INTERPRETATIONS**

2 30. Paragraph titles or captions contained herein are inserted as a matter of
3 convenience and for reference, and in no way define, limit, extend, or describe the
4 scope of this Stipulation of Settlement or any provision hereof. Each term of this
5 Stipulation of Settlement is contractual and not merely a recital.

6 **MODIFICATION**

7 31. This Stipulation of Settlement may not be changed, altered, or
8 modified, except in writing and signed by the Parties' counsel hereto, and approved
9 by the Court. This Stipulation of Settlement may not be discharged except by
10 performance in accordance with its terms or by a writing signed by the Parties'
11 counsel hereto.

12 **INTEGRATION CLAUSE**

13 32. This Stipulation of Settlement contains the entire agreement between
14 the Parties relating to the settlement and transaction contemplated hereby, and all
15 prior or contemporaneous agreements, understandings, representations, and
16 statements, whether oral or written and whether by a party or such party's legal
17 counsel, are merged herein. No rights hereunder may be waived except in writing.

18 **BINDING ON ASSIGNS**

19 33. This Stipulation of Settlement shall be binding upon and inure to the
20 benefit of the Parties hereto and their respective heirs, trustees, executors,
21 administrators, successors and assigns.

22 **CLASS COUNSEL SIGNATORIES**

23 34. The parties agree that it is impossible or impractical to have each Class
24 Member execute this Stipulation of Settlement. The Notice, Exhibit "A," will
25 advise all Class Members of the binding nature of the release and such shall have
26 the same force and effect as if this Stipulation of Settlement were executed by each
27 Class Member.

1 **COUNTERPARTS**

2 35. This Stipulation of Settlement may be executed in counterparts, and
3 when each party has signed and delivered at least one such counterpart, each
4 counterpart shall be deemed an original, and, when taken together with other signed
5 counterparts, shall constitute one Stipulation of Settlement, which shall be binding
6 upon and effective as to all Parties. The Parties agree that DocuSign signatures shall
7 be appropriate and treated the same as hand signatures

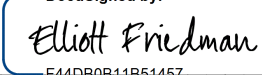
8 **ESCALATOR CLAUSE**

9 37. Cox has represented that there are 444 wage statements impacted by the
10 issue identified by Plaintiffs that led the total hours figure to be greater than the
11 hours worked in the pay period on the print version of the wage statement. In the
12 event that the parties discover that there are actually more than 450 wage statements
13 so impacted, the Parties shall meet and confer as to an appropriate modification of
14 the Gross Fund Value.

15 Dated: May __, 2024

16 _____
Samnang Touch
17 Plaintiff and Class Representative

18
19 Dated: May 10, 2024
20 5/10/2024

18 DocuSigned by:
19 
20 F44DB0B41B51457...
21 _____
22 for Defendants
23 Elliott Friedman
24 COX AUTOMOTIVE CORPORATE
25 SERVICES, LLC and COX
26 AUTOMOTIVE MOBILITY
27 SOLUTIONS, INC.
28

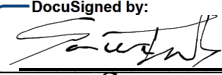
COUNTERPARTS

35. This Stipulation of Settlement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Stipulation of Settlement, which shall be binding upon and effective as to all Parties. The Parties agree that DocuSign signatures shall be appropriate and treated the same as hand signatures

ESCALATOR CLAUSE

37. Cox has represented that there are 444 wage statements impacted by the issue identified by Plaintiffs that led the total hours figure to be greater than the hours worked in the pay period on the print version of the wage statement. In the event that the parties discover that there are actually more than 450 wage statements so impacted, the Parties shall meet and confer as to an appropriate modification of the Gross Fund Value.

Dated: May¹⁰, 2024

DocuSigned by:

68835145833

Samnang Touch
Plaintiff and Class Representative

Dated: May 10, 2024

for Defendants
Elliott Friedman
COX AUTOMOTIVE CORPORATE
SERVICES, LLC and COX
AUTOMOTIVE MOBILITY
SOLUTIONS, INC.

1 **Approval As To Form And Content By Counsel:**

2 Dated: May 10, 2024

3 5/10/2024

4 SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP

5 DocuSigned by:
6 *Thomas Kaufman*
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7 THOMAS R. KAUFMAN
8 Attorneys for Defendants

9
10 Dated: May __, 2024

11 DIVERSITY LAW GROUP, P.C.

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13
14
15 LARRY W. LEE
Attorneys for Plaintiff

1 **Approval As To Form And Content By Counsel:**

2 Dated: May 10, 2024

3 SHEPPARD, MULLIN, RICHTER &
4 HAMPTON LLP

5
6
7 _____
8 THOMAS R. KAUFMAN
9 Attorneys for Defendants

10 Dated: May 10, 2024

11 DIVERSITY LAW GROUP, P.C.

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13 
14 _____
15 LARRY W. LEE
16 Attorneys for Plaintiff
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EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Touch v. Cox Automotive Corporate Services, LLC, et al.

United States District Court for the Eastern District of California Case No. 2:23-cv-01945-TLN-CSK.

PLEASE READ THIS NOTICE CAREFULLY.

A court authorized this notice. This is not a solicitation. This is not a lawsuit against you and you are not being sued. However, your legal rights are affected whether or not you act.

If you were employed in California by Cox Automotive Corporate Services, LLC or Cox Automotive Mobility Solutions, Inc. (collectively, “Cox”) as an hourly non-exempt employee in California who received an itemized wage statement with an inaccurate total hours worked figure between May 19, 2022 and July 7, 2023 then you may be entitled to receive money.

You are receiving this additional notice to inform you of the terms of the classwide settlement the parties reached subject to the court’s final approval so that you are aware of the settlement terms and your individual recovery under the settlement; the court has already granted preliminary approval of the class settlement. This notice also provides you options and instructions as to how you may respond to the notice.

1. WHAT IS THE PURPOSE OF THIS NOTICE?

The purpose of this Notice is to let you know that the court has granted preliminary approval of a settlement in a class action lawsuit pending in the United States District Court for the Eastern District of California Case No. 2:23-cv-01945-TLN-CSK entitled *Touch v. Cox Automotive Corporate Services, LLC, et al.*, and that you may be entitled to a payment as part of the settlement.

A hearing addressing the fairness, adequacy, and reasonableness of the settlement will be held on _____ at _____.m., in Courtroom 2, 15th Floor, of the United States District Court for the Eastern District of California, located at 501 I Street, Sacramento, California 95814, to determine whether the settlement should receive the Court’s final approval.

2. WHAT ARE THE CLASS CLAIMS?

The lawsuit alleges, in relevant part, that Cox provided wage statements to California employees that did not contain all of the information required under Labor Code Section 226(a). The lawsuit also alleges related claims for civil penalties for violation of the California Labor Code Private Attorneys General Act (“PAGA”). The complaint seeks to recover civil and statutory penalties and attorneys’ fees and costs.

3. WHAT IS COX’S POSITION ON THE CLAIMS?

Cox denies all the allegations in the case. Cox contends that it has at all time provided accurate wage statements to its California employees that fully complied with the requirements of Labor Code Section 226.

4. WHY DOES PLAINTIFF CHRISTONE TOUCH SEEK SETTLEMENT APPROVAL?

Plaintiff seeks approval of the settlement because Plaintiff has reached a proposed settlement with Cox that Plaintiff believes to be fair, reasonable, adequate, and in the best interests of the members of the class and all parties.

5. WHY DID I GET THIS NOTICE?

You received this Notice because you were identified as a Class Member defined as follows:

Current and former California non-exempt employees of Cox Automotive Corporate Services, LLC who, after May 19, 2022, received wage statements showing a ‘total hours’ figure that did not match the hours worked in the pay period of the wage statement. The effective date of the release will be July 7, 2023, which is the date that Cox contends it corrected the issue with its systems that had led to the issue that is the subject of the settled claim.

In other words, you are one of 150 employees who received one or more of 444 wage statements that allegedly contained an inaccurate total of hours worked. The Court authorized this Notice as it has preliminarily approved of the class settlement.

6. WHO ARE THE ATTORNEYS REPRESENTING THE PARTIES?

Class Counsel

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HAMPTON, LLP

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Telephone: 310-228-3700

7. WHAT IS THE PROPOSED SETTLEMENT?

The following is a summary of the proposed settlement. The complete terms of the proposed settlement are stated in the Stipulation of Settlement, which is on file with the Court and is available on line at [www._____](http://www._____.).

Under the Stipulation of Class Settlement between Plaintiff and Cox (“Stipulation of Settlement” or “Settlement Agreement”), Cox has agreed to pay \$150,000 as a “Gross Fund Value” to settle the claims asserted in this lawsuit, plus Cox has agreed separately to pay for the costs of having a third party, _____, administer the settlement.

Prior to any distribution of funds to class members, subject to Court approval, the following amounts will be deducted from the Gross Fund Value: (1) attorneys' fees (not to exceed \$50,000) to compensate Class Counsel for the unpaid work they have performed on the class action; (2) reimbursement of Class Counsel's out-of-pocket litigation expenses, up to \$20,000; (3) a payment of no more than \$6,500 to the claims administrator the class settlement; (4) a payment of \$15,000 to the State of California as part of the settlement of the PAGA claim; (5) a payment of \$5,000 for the employee portion of the PAGA payment; and (6) an award of additional funds (not to exceed \$5,000) to class representative Samnang Touch, in consideration of his services to the class in this case. Following the Court-approved deductions, the remaining sum of approximately \$45,000 (the "Net Fund Value") will be distributed to the 150 class members who do not properly request exclusion.

The motion for final approval of the settlement, which will include Class Counsel's application for an award of attorney's fees and costs will be filed with the court by _____, 2024 and may be viewed in the court file at the United States District Court for the Eastern District of California, located at 501 I Street, Sacramento, California 95814, or on line at [www._____](http://www._____.).

Cox has agreed to pay each class member an amount as calculated in accordance with the terms of the Settlement Agreement after final approval of the class action settlement. This settlement payment will be distributed by the Claims Administrator approximately ten (10) business days after the "effective date" of the final approval as defined in the settlement agreement. Your settlement check will be valid for 180 days, after which it will become void. If you do not cash or deposit the check before it becomes void, the funds will be sent to the California State Controller as Unclaimed Property in your name. Instructions for retrieving your settlement funds from the Unclaimed Property can be found at www.ucpi.sco.ca.gov/UCP or by contacting the California State Controller's office.

The *Touch* lawsuit also contains a separate wage statement claim asserting that Cox failed to provide accurate information in its wage statements concerning the identity of the legal "employer" of the putative class members. That claim is unaffected by this settlement and is not subject to any release, or judgment at this time.

8. YOUR ESTIMATED PAYMENT UNDER THIS SETTLEMENT IS \$ _____. This amount is based on your having received ___ of the approximately 444 wage statements at issue. If you dispute these figures, you may contact the Claims Administrator, as discussed below.

9. WHAT ARE MY RIGHTS IN THIS MATTER?

If you fit the description of a class member as set forth in this Notice, you have four options. Each option has its own consequences which you should understand before making your decision. Your rights regarding each option and the procedure you must follow to select each option are set forth below.

A. Option One. Do Nothing and Participate in the Settlement.

To get money from the settlement, you do not need take any action. As a class member, if the Court approves the settlement, you are bound by the settlement. You will then receive payment and will provide a release to Cox and other "Releasees" (which includes Cox's affiliates, subsidiaries, parent companies, predecessor entities, successor entities, related companies, partners, officers, directors, managers, servants, agents, employees, former employees, representatives, and attorneys, past or present, and all persons acting under, by, through, or in concert with any of them). The scope of the release is as follows:

Each member of the Settlement Class, regardless of whether that member submitted a timely claim, releases Cox and the Releasees from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorney's fees, damages, action or causes of action contingent or accrued for, which would reasonably arise from the allegation that Cox violated Labor Code Section 226(a)(2) as to the 444 wage statements

Cox has identified where the total hours figure was greater than the hours worked in the pay period. It will not impact the viability of claims that Cox failed to list an accurate employer name on wage statements, except with respect to the specific 444 wage statements on which Cox is making payments under this settlement agreement. The effective date of the release will run from on May 19, 2022, through July 7, 2023, the date that Cox implemented the fix on its wage statements with respect to the total hours worked. Plaintiff also agrees that he will be barred from further pursuing the theory under Labor Code § 226(a)(2) that Cox provided wage statements that inaccurately listed hours worked to him and the remaining 150 individuals receiving settlement payments within this lawsuit.

If the Court gives final approval to the settlement, the Settlement Administrator will send you a check to the address it has on file for you. **It is important that you keep the Settlement Administrator informed of any changes in your address until you receive your settlement payment.**

B. Option Two. You May Request to Be Excluded from the Settlement (to “Opt Out”).

If you do not wish to participate in the settlement and wish to retain your right to bring your own claims within the scope of the lawsuit as an individual, you must send a request for exclusion to the Settlement Administrator, set forth below. The request for exclusion must be mailed to the Settlement Administrator and **post-marked on or before [DATE]**. The request for exclusion from the settlement **must** include the case name (*Touch v. Cox Automotive Corporate Services, LLC, et al.*) your first and last name, signature, address, phone number, last four digits of your social security number for verification purposes and a statement that you wish to exclude yourself from the settlement of the case or words to that effect. No form is provided for an exclusion request. Any Class Member who requests exclusion will not be entitled to any portion of the class settlement and will not be providing a release of the above class claims to Cox and other Releasees. If you exclude yourself from the settlement, you will not have any right to object, appeal, or comment on the settlement. Class Members who fail to submit a valid and timely exclusion request shall be bound by all terms of the Settlement Agreement and any judgment entered in the Action if the Settlement is approved by the Court. A request for exclusion will not apply to the share allocated for PAGA, which shall be paid to all of the 150 employees who received on of the 444 affected wage statement. In other words, you will release your claims under the PAGA and you will receive your portion of the PAGA penalties allocated to aggrieved employees, *i.e.*, \$5,000.00 based on how many of the 444 wage statements you received.

C. Option Three. You May Dispute the Information Used to Calculate Your Settlement Payment.

The amount of your estimated settlement payment is based on how many of the 444 wage statements you received. If you do not believe that the values for these items assigned to you in Section 7 of this notice is correct, you may dispute those numbers. Any such dispute must be mailed to the Settlement Administrator and **post-marked on or before [DATE]**. Disputes must state what you believe to be the correct values for these items and must be accompanied by any documentation you have to support your dispute. In addition, your dispute **must** include the case name (*Touch v. Cox Automotive Corporate Services, LLC, et al.*) your first and last name, signature, address, phone number, and last four digits of social security number for verification purposes. Sending a dispute will not risk your right to a settlement payment.

D. Option Four. You May Object to the Settlement.

You may object to the settlement before final approval of the settlement by the Court. In order to object to the settlement or any portion of it, you should send any such written objection to the Settlement Administrator on or

before **[DATE]**. Objections **must** state all of the reasons for your objection. In addition, any objection **must** include the case name (*Touch v. Cox Automotive Corporate Services, LLC., et al.*) your first and last name, address, phone number, and last four digits of social security number for verification purposes and must be signed by you or your attorney. While the Court may, in its discretion, permit objections to be filed up until the date of the Final Approval Hearing, you will only be assured that your objection will be considered if you submit it to the Claims Administrator by the **[DATE]** deadline.

10. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT

The Final Approval Hearing on the fairness and adequacy of the proposed settlement, the plan of distribution, the enhancement award to the Plaintiff, and Class Counsel's request for attorneys' fees and costs, and other issues will be held on _____, 2024 at _____.m., in Courtroom ____ of the United States District Court for the Eastern District of California, located at 501 I Street, Sacramento, California 95814 (Courtroom 2, 15th Floor). You may attend the Final Approval Hearing and be heard even if you do not submit an objection to the settlement. The Final Approval Hearing may be continued to another date without further notice. If you plan to attend the Final Approval Hearing, it is recommended that you contact the Settlement Administrator to confirm the date and time.

11. NON-RETALIATION

Cox will not retaliate or take any adverse action against you or any Class Member for participating in the settlement.

12. ADDITIONAL INFORMATION

This Notice only summarizes the lawsuit and settlement. For more information, you may inspect the Court file at the United States District Court for the Eastern District of California, located at 501 I Street, Sacramento, California 95814 (Courtroom 2, 15th Floor). You may also review the settlement agreement and other documents related to this settlement on line at www._____. You may also contact the Settlement Administrator as follows:

Touch v. Cox Automotive Corporate Services, LLC., et al.)
c/o [Administrator]
[ADDRESS]
[TELEPHONE NUMBER]

If you have questions, you may call the Settlement Administrator, _____, toll free at [TELEPHONE NUMBER]. Ask about the *Touch v. Cox Automotive Corporate Services, LLC., et al.*) class settlement.

You may also contact Class Counsel at the addresses and telephone numbers listed above. **PLEASE DO NOT CALL THE COURT OR COUNSEL FOR COX.**

If your address changes or is different from the address on the envelope enclosing this Notice, please promptly notify the settlement administrator.

EXHIBIT B

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Attorneys for Plaintiff and the Class
(Additional Counsel on Next Page)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SAMNANG TOUCH, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

COX AUTOMOTIVE CORP SVCS., LLC,
a limited liability company; COX
AUTOMOTIVE MOBILITY SOLUTIONS,
INC., a corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 2:23-cv-01945-TLN-CSK

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: July 25, 2024
Time: 2:00 p.m.
Courtroom: 2, 15th Floor
Judge: Hon. Troy L. Nunley

Complaint Filed: May 19, 2023

ADDITIONAL COUNSEL

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Attorneys for Plaintiff
SAMNANG TOUCH

1 Plaintiff Samnang Touch’s (“Plaintiff”) Motion for Preliminary Approval of Class Action
2 Settlement came before this Court for hearing on July 25, 2024. The Court, having fully
3 reviewed Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the supporting
4 Memorandum of Points and Authorities and Declarations filed in support thereof, including the
5 Stipulation of Class Settlement and Release (“Settlement Agreement”) and Notice of Pendency
6 of Class Action (“Notice”), and for good cause appearing, HEREBY MAKES THE
7 FOLLOWING ORDERS:

8 1. The Court grants preliminary approval of the settlement based upon the terms set
9 forth in the Settlement Agreement, and is incorporated in full by this reference and made a part
10 of this Order. The Settlement appears to be fair, adequate, and reasonable to the Class.

11 2. All capitalized terms defined in the Settlement Agreement shall have the same
12 meaning when used in this Order.

13 3. The Settlement falls within the range of reasonableness of a settlement which
14 could ultimately be given final approval by this Court, and appears to be presumptively valid,
15 subject only to any objections that may be raised at the Final Approval Hearing and final
16 approval by this Court. The Court notes that Defendant Cox Automotive Corporate Services,
17 LLC and Cox Automotive Mobility Solutions, Inc. (collectively, “Defendant”) has agreed to
18 create a common fund of \$150,000.00 to cover (a) settlement payments to Class Members who
19 do not validly opt out; (b) a Class Representative enhancement award of up to \$5,000.00 for
20 Class Representative Samnang Touch; (d) Class Counsel’s attorneys’ fees, not to exceed One
21 Third (1/3) of the Gross Settlement Amount, and actual litigation expenses incurred by Class
22 Counsel, up to \$20,000.00; and (e) Settlement Administration Costs of approximately \$6,500.00.

23 4. The Court finds and concludes that the Settlement is the result of arm’s-length
24 negotiations between the Parties and a mediation conducted after Class Counsel had adequately
25 investigated Plaintiff’s claims and become familiar with their strengths and weaknesses. The
26 assistance of an experienced mediator in the settlement process further confirms that the
27 Settlement is non-collusive.

28 5. In accordance with the Settlement Agreement and the Court’s Order Granting

1 Plaintiff's Motion for Class Certification, the "Class" consists of all current and former
2 California non-exempt employees of Cox Automotive Corporate Services, LLC who, after May
3 19, 2022, received wage statements showing a total hours figure that did not match the hours
4 worked in the pay period. The Class Period is defined as May 19, 2022 through July 7, 2023. The
5 Court hereby finds and concludes that the Class satisfies all of the requirements for certification
6 under Fed. R. Civ. P. 23(a) and 23(b)(3).

7 6. The Court approves Xpand Legal ("Settlement Administrator") to perform the
8 duties of the Settlement Administrator as set forth in this Order and the Settlement Agreement.

9 7. The Court finds that the Notice, which is attached as Exhibit A to the Settlement
10 Agreement, comports with Fed. R. Civ. P. 23 and all Constitutional requirements including those
11 of due process. The Court further finds that the Notice adequately advises the Class about the
12 class action; the terms of the proposed settlement, the benefits available to each Class Member,
13 and the proposed fees and costs to Class Counsel; each Class Member's right to object or opt out
14 of the settlement, and the timing and procedures for doing so; preliminary Court approval of the
15 proposed settlement; and the date of the Final Approval hearing as well as the rights of Class
16 Members to file documentation in support of or in opposition to and appear in connection with
17 said hearing. The Court further finds that the mailing of the Notice to each Class Member's most
18 recent address, with appropriate skip tracing and mail forwarding for Notices returned as
19 undeliverable, as specifically described in the Settlement Agreement, constitutes reasonable
20 notice to Class Members of their rights with respect to the class action and proposed settlement.

21 8. Within ten (10) business days of the issuance of this Order, Defendant shall
22 provide the Settlement Administrator with the Class Data List, as specified in the Settlement
23 Agreement.

24 9. Within ten (10) business days after receipt of the Class Data List, the Settlement
25 Administrator shall mail the Notice in the manner specified in the Settlement Agreement.

26 10. The Court orders that any request for exclusion from the Settlement must be
27 postmarked no later than 45 days after the Notice is initially mailed to Class Members, must be
28 signed, and must be received by the Settlement Administrator to be timely and valid.

1 11. Any Class Member who does not timely and validly request exclusion from the
2 settlement may object to the Settlement Agreement. Any objection must be in writing, and must
3 be mailed to the Settlement Administrator. Such objection shall include the name, address, phone
4 number, last four digits of the Social Security Number of the Class Member, the basis of the
5 objection, and must be signed by the Class Member. To be timely, the objection must be
6 postmarked no later than 45 days after the Notice is initially mailed to the Class. Any Class
7 Member who does not timely submit such a written objection will not be permitted to raise such
8 objection, except for good cause shown, and any Class Member who fails to object in the manner
9 prescribed by this Order will be deemed to have waived, and will be foreclosed from raising, any
10 such objection.

11 12. The Final Approval Hearing shall be held before this Court on _____,
12 at 2:00 p.m. in Courtroom 2, to consider the fairness, adequacy, and reasonableness of the
13 proposed settlement preliminarily approved by this Order, and to consider the motion of Class
14 Counsel for an award of reasonable attorneys' fees and costs and a Class Representative
15 enhancement award.

16 13. Any party to this case, including any Class Member, may be heard in person or by
17 counsel, to the extent allowed by the Court, in support of, or in opposition to, the Court's
18 determination of the good faith, fairness, reasonableness, and adequacy of the proposed
19 settlement, the requested attorneys' fees and costs, the requested Class Representative
20 enhancement award, and any order of final approval and Judgment regarding such settlement,
21 fees, costs, and payments; provided however, that no person shall be heard in opposition to such
22 matters unless such person has complied with the conditions set forth in the Notice.

23 14. Briefs regarding the settlement shall be served and filed in accordance with the
24 Local Rules.

25 15. The Court orders that if for any reason the Court does not execute and file an
26 order of final approval and judgment, or if such a final approval order is reversed, the Settlement
27 Agreement and the proposed settlement which is the subject of this Order and all evidence and
28 proceedings had in connection therewith, shall be without prejudice to the status quo ante rights

1 of the Parties to the litigation as more specifically set forth in the Settlement Agreement.

2 16. The Court orders that the Settlement Agreement shall not be construed as an
3 admission or evidence of liability.

4 17. Pending further order of this Court, all proceedings in this matter except those
5 contemplated herein and in the Settlement Agreement are stayed.

6 18. The Court expressly reserves the right to adjourn or continue the Final Approval
7 Hearing without further notice to Class Members.

8
9 IT IS SO ORDERED.

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12 Dated: _____

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14 HON. TROY L. NUNLEY
15 UNITED STATES DISTRICT JUDGE
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