

EVAN S. GAINES, ESQ. SBN 287668
GAINES LAW CORPORATION
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Telephone: (805) 892-8200
Facsimile: (805) 800-8928
evan@gaines.law

Attorneys for Plaintiff Marissa Silva,
on behalf of herself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*

[Additional Counsel on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF IMPERIAL

MARISSA SILVA, on behalf of herself and all
“aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

DRIVELINE RETAIL MERCHANDISING,
INC., a New Jersey corporation, and DOES 1
through 10, inclusive,

Defendants.

Case No. ECU003111

Assigned to Hon. L. Brooks Anderholt, Dept 9

**DECLARATION OF EVAN S. GAINES
IN SUPPORT OF STIPULATION
APPROVING SETTLEMENT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT**

*[Concurrently filed: Stipulation and Order
Approving Settlement]*

Complaint Filed: September 11, 2023

1 Robert S. Blumberg, Bar No. 161649
rblumberg@littler.com
2 LITTLER MENDELSON, P.C.
2049 Century Park East
3 5th Floor
Los Angeles, California 90067.3107
4 Telephone: 310.553.0308
Fax No.: 800.715.1330

5 Melanie Rollins, Bar No. 305901
mrollins@littler.com
6 LITTLER MENDELSON, P.C.
7 633 West Fifth Street
63rd Street
8 Los Angeles, California 90071
Telephone: 213.443.4300
9 Fax No.: 213.443.4299

10 Attorneys for Defendant
TRION SOLUTIONS II, INC.

11 Yvette Davis, Esq., Bar No. 165777
12 HAIGHT BROWN & BONESTEEL LLP
2030 Main Street, Suite 1525
13 Irvine, CA 92614
14 Telephone: 714.426.4600
Facsimile: 714.426.0826
15 Email: ydavis@hbblaw.com

16 Douglas Bracken, Esq.*
17 KANE RUSSELL COLEMAN LOGAN PC
901 Main Street, Suite 5200
18 Dallas, TX 75202
Telephone: 214.777.4265
19 Email: dbracken@krcl.com
*Pro Hac Vice Application to be Filed

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21 Attorneys for Defendant
DRIVELINE RETAIL MERCHANDISING, INC.
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1. I am an attorney duly admitted to the practice of law in the State of California. I am the principal of Gaines Law Corporation, counsel for Plaintiff Marissa Silva (“Plaintiff”) in this Action. I have personal knowledge of the facts set forth herein and if called as a witness to testify to them, I could and would do so competently.

2. I obtained my BA degree from the University California at Santa Barbara in 2005. I majored in Film Studies.

3. Thereafter, I attended the Michigan State University College of Law (“MSU”). At MSU, I was the recipient of jurisprudence awards (highest grade) in Client Counseling and Interviewing and Complex Civil Litigation. At MSU, I focused my studies on complex litigation. I earned my JD and became a member of the California Bar in 2012.

4. After becoming a member of the Bar, I practiced law with my father (Kenneth S. Gaines) and brother (Daniel F. Gaines) at Gaines & Gaines, APLC. In January 2024, I started my own law firm, Gaines Law Corporation. My practice specializes in litigation, with an emphasis in employment disputes like this one. Over 95% of my practice is devoted to complex employment litigation similar to the instant action.

5. My firm has represented employees in employment matters such as this one, with an emphasis in wage and hour issues. I have participated, and have been certified as Court-approved class counsel, in dozens of class and representative action matters since my admission to the Bar. A true and correct list of some of the cases in which I have been appointed as class counsel is attached hereto as **Exhibit “A”**.

6. On July 5, 2023, Plaintiff Marissa Silva (“Plaintiff”) transmitted a letter to the California Labor & Workforce Development Agency (“LWDA”) and Defendant Driveline Retail Merchandising, Inc. (“Driveline”) that Plaintiff alleges to be in compliance with the exhaustion requirements of the California Labor Code Private Attorneys General Act (“PAGA”), articulating claims related to the failure to pay all wages due; failure to pay all minimum and overtime wages due; the failure to pay premium wages for missed rest and meal breaks; reimburse all business expenses;

1 the failure to issue accurate wage statements; and the failure to pay all wages due at the separation of
2 employment. A true and correct copy of the July 5, 2023 letter to the LWDA is attached hereto as
3 **Exhibit “B.”**

4 7. On September 11, 2023, Plaintiff filed a Representative Action Complaint in the
5 Superior Court of the State of California for the County of Imperial, thereby commencing this Action
6 entitled Marissa Silva v. Driveline Retail Merchandising, Inc., a New Jersey corporation, case number
7 ECU003111. Plaintiff filed her Complaint on behalf of the State of California and other aggrieved
8 employees as a PAGA action based on violations of Labor Code §§ 201, 202, 226(a), 226.3, 226.7,
9 227.3, 246, 510, 512, 558, 1174, 1174.5, 1194, and 2802.

10 8. On May 21, 2024, Plaintiff transmitted a supplemental letter to the LWDA, Driveline,
11 and Trion Solutions II, Inc. (“Trion”) (collectively, Driveline and Trion are referred to as the
12 “Defendants”) that Plaintiff alleges to be in compliance with the exhaustion requirements of the
13 PAGA, alleging claims against Trion. A true and correct copy of the May 21, 2024 letter to the LWDA
14 is attached hereto as **Exhibit “C.”**

15 9. On August 6, 2024, Plaintiff filed a First Amended Complaint that formally added
16 Trion Solutions II, Inc. as an additional Defendant.

17 10. Defendants dispute and deny the allegations and claims asserted in the Action and
18 deny that the Action is suitable for representative treatment.

19 11. During the course of the litigation, my office and Defendants’ Counsel engaged in
20 informal discovery and fully shared the information necessary for all sides to conduct a legitimate
21 investigation into the allegations of the action and potential defenses thereto. The Parties have reached
22 their settlement only after such discovery and investigation were performed.

23 12. Prior to attending a mediation and during that mediation, Defendants produced
24 extensive documents, including employee handbooks, wage statements and time records, summary
25 spreadsheets, and Aggrieved Employee time and pay records. The Parties attended two mediations
26 with mediator Brandon McKelvey, Esq. on May 20, 2024 and October 25, 2024, wherein an
27 agreement was reached following a mediator’s proposal.

1 13. The terms and conditions of the settlement are set forth in the Private Attorneys
2 General Act (Labor Code § 2698 et seq.) Settlement Agreement (“Settlement” or “Settlement
3 Agreement”). The Settlement Agreement resolves all claims asserted in the LWDA Letters and First
4 Amended Complaint. Attached hereto as **Exhibit “D”** is a true and correct copy of the Parties’
5 Settlement Agreement.

6 14. Based on the information and documents obtained through informal discovery,
7 Plaintiff assessed the maximum value of the limited PAGA claims to be released by the settlement to
8 be approximately \$729,600 (at the rate of a \$100 penalty for approximately 7,296 pay periods at issue,
9 without stacking violations).

10 15. As set forth in the Settlement Agreement, the Gross Settlement Amount is \$225,000,
11 and includes an apportionment of attorneys’ fees and costs, payment to the settlement administrator,
12 and a general release payment/enhancement award to Plaintiff. By a separate confidential agreement,
13 the Parties have resolved all of Plaintiff’s individual claims through a comprehensive general release
14 in favor of Defendants. In connection with his general release of all claims, Plaintiff will be paid a
15 confidential sum, separate from the Gross Settlement Amount. My office is not recovering any
16 attorney’s fees from Plaintiff’s individual settlement.

17 16. Due to the passage of time between the first mediation and the second mediation, the
18 Parties have concluded that the “escalator clause” would be applicable. Defendants originally
19 estimated that there were approximately 7,296 pay periods worked during the PAGA Period following
20 the initial mediation. Defendants have subsequently determined that through the date of the second
21 mediation, October 25, 2024, there were 9,099 pay periods worked by approximately 969 PAGA
22 Settlement Employees. Accordingly, the number of pay periods at issues has increased by 24%, and
23 the Gross Settlement Amount shall increase by 14%, adding \$31,500 to the Gross Settlement Amount
24 set forth in Paragraph III.2 of the Settlement Agreement.

25 17. My office has submitted a copy of the Settlement Agreement, together with the
26 Stipulation, the accompanying Order and Judgement, and this Declaration, to the LWDA as required
27 by PAGA. Attached hereto as **Exhibit “E”** is a true and correct copy of the confirmation my office
28 received from the LWDA.

1 18. The Parties request that the Court enter the accompanying order approving the
2 Settlement, as permitted by Labor Code § 2699(l), and entering Judgment in accordance with the
3 terms and conditions of the Settlement Agreement.

4 I declare, under penalty of perjury, under the laws of the State of California, that the foregoing
5 is true and correct. Executed on February 11, 2025 at Westlake Village, California.

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7 
8 EVAN S. GAINES

EXHIBIT A

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lingad v. Top Quality Manufacturing, LLC, Los Angeles County Superior Court, Case No. 24STCV03079

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Ochoa v Agusa, Kings County Superior Court, Case No. 24CU0042

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. CIVDS1712220

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

EXHIBIT B

GAINES & GAINES

A PROFESSIONAL LAW CORPORATION

WWW.GAINESLAWFIRM.COM

4550 EAST THOUSAND OAKS BOULEVARD, SUITE 100
WESTLAKE VILLAGE, CALIFORNIA 91362

PHONE (818) 703-8985
FAX (818) 703-8984

July 5, 2023

Via Certified Mail

Labor & Workforce Development Agency
By electronic submission

Driveline Retail Merchandising, Inc.
1141 E North Rd.
Taylorville, IL 62568

Defendant mailed certified #70180360000011918575

Agent for Service of Driveline Retail Merchandising, Inc.
Registered Agent Solutions, Inc.
Jackson Yang
720 14th St.,
Sacramento, CA 95814

Agent mailed certified #70180360000011918599

Re: ***Labor Code Violations of Driveline Retail Merchandising, Inc., – Compliance Letter of California Labor Code § 2698, the Private Attorneys General Act of 2004***

Dear LWDA:

This office represents Marissa Silva, a former non-exempt California employee of Driveline Retail Merchandising, Inc. ("Defendant"). We write this letter in compliance with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client was employed by Defendant in Northern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its non-exempt California employees ("Aggrieved Employees").

Our client alleges that Defendant failed to pay her and other Aggrieved Employees all minimum and overtime wages earned during the course of employment, in violation of Labor Code §§ 510, 558, 1194, and 1194.2 and IWC Wage Order 7-2001, section 4. Our client and other Aggrieved Employees were paid \$10.00 per hour – less than the applicable minimum wage. This resulted in our client and other Aggrieved Employees being paid significantly less than what is required by law. Defendant also failed to retain accurate records in accordance with Labor Code §§ 1174 and 1174.5, including for employees' start and end times for every shift. These instances violate Labor Code §§ 510, 558, 1174, 1174.5, 1194, and 1194.2 and IWC Wage Order No. 7-2001.

Defendant required our client and other Aggrieved Employees to be on-call, under Defendant's control, with substantial restrictions, without pay. Defendant did not compensate them for time spent on-call, notwithstanding the fact they were subject to Defendant's control during this on-call time. Defendant also required our client and other Aggrieved Employees to drive to multiple

jobsites in a day, but did not compensate them for time spent driving between stores, notwithstanding the fact they were subject to Defendant's control during this time. An employer is obligated to pay the wages of an hourly employee for all time that the employee is under the control of her employer, and this includes all the time the employee is suffered or permitted to work, whether or not required to do so. When our client and other Aggrieved Employees were on-call or driving to different jobsites, they were under the control of Defendant and required to be compensated for all hours worked. Defendant, however, failed to do so. These instances deprived our client and other non-exempt Aggrieved Employees of significant hours worked and minimum and overtime wages due. Defendant also failed to retain accurate records in accordance with Labor Code §§ 1174 and 1174.5, including for employees' start and end times for every shift, including, but not limited to, standby/on-call shifts. These constitute violations of Labor Code §§ 510, 558, 1174, 1174.5, 1194, and 1194.2 and IWC Wage Order 7-2001.

Our client alleges that Defendant failed to properly compute bonuses, shift differential wages, and/or other non-base hourly wages earned by her and other Aggrieved Employees into their regular rate of pay for purposes of paying them meal and rest period premiums, overtime wages, vacation wages, and sick pay wages at the correct rates, in violation of Labor Code §§ 226.7, 246, 510, 512, 558, and 1194. Defendant paid our client and other Aggrieved Employees bonuses, shift differential wages, and/or other non-base hourly wages; however, Defendant failed to properly blend these forms of pay, and instead pay our client and other Aggrieved Employees meal and rest period premiums, overtime wages, vacation wages, and sick pay wages based *only* on the base hourly rate of pay, thus depriving our client and other Aggrieved Employees of all meal and rest period premiums, overtime wages, vacation wages, and sick pay wages earned. This violates Labor Code §§ 226.7, 246, 510, 512, 558, and 1194.

Defendant also failed to reimburse our client and other Aggrieved Employees for necessary business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor Code § 2802, including, but not limited to, the use of their personal vehicles. Labor Code § 2802 states that an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties. Defendant's failure to do so violates this section.

Our client alleges that Defendant failed to pay correct premium wages to her and other Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 7-2001. Our client and other Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. Our client and other Aggrieved Employees were frequently too busy to take a rest period. When they were able to take a rest period, they were oftentimes late, cut short, or on-duty. This violates Labor Code § 226.7 and IWC Wage Order No. 7-2001.

Defendant failed to pay correct premium wages to our client and other Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC

Driveline Retail Merchandising, Inc.
Registered Agent Solutions, Inc.
Jackson Yang
July 5, 2023
Page 3

Wage Order 7-2001. Our client and other Aggrieved Employees were routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first or second meal period. When they were able to take a meal period, they are oftentimes late, cut short, or on-duty. Defendant also failed to retain accurate records in accordance with Labor Code §§ 1174 and 1174.5, including for employees' start and end times for meal periods. This violates Labor Code §§ 226.7, 512, 558, 1174, and 1174.5 and IWC Wage Order 7-2001.

Our client further alleges that Defendant failed to provide her and all other Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Our client and other non-exempt Aggrieved Employees were not paid all wages due, as stated above. As such, the wage statements provided by Defendant failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3. Moreover, and independent of the above allegations, the wage statements issued to our client and Aggrieved Employees list various hourly rates of pay, including regular pay and overtime pay, but fail to set forth the correct number of hours worked at each hourly rate and fail to set forth the correct rates of pay associated with each hourly rate, in violation of Labor Code § 226(a)(9). For example, when overtime hours are worked, the overtime rate listed is incorrect and the number of regular hours worked listed is incorrect. Additionally, because the number of hours worked at each hourly rate is listed incorrectly, and because duplicate hours worked are frequently listed, adding them together yields an incorrect count of total hours worked. There is no separate entry for total hours worked during the pay period. It is simply impossible to ascertain from the face of the wage statements the number of total hours worked for the pay period. This violates Labor Code § 226(a)(2).

Our client further alleges that Defendant failed to pay her and other Aggrieved Employees all wages due, including all accrued, but unused vacation wages, at the separation of their employment based on the time frames required by Labor Code §§ 201-202 and 227.3. As stated above, our client and other Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. Furthermore, when our client was terminated, she was not issued her final pay at the time of termination. Instead, she was issued her final wages several days later. This violates Labor Code §§ 201-202 and 227.3 and is alleged on behalf of our client and certain Aggrieved Employees no longer employed by Defendant.

The \$75 PAGA filing fee has been submitted to the LWDA concurrently with the transmission of this letter.

Driveline Retail Merchandising, Inc.
Registered Agent Solutions, Inc.
Jackson Yang
July 5, 2023
Page 4

We invite Defendant or their attorneys to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Very truly yours,

GAINES & GAINES
A Professional Law Corporation

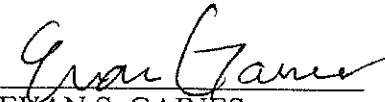
By : 
EVAN S. GAINES

EXHIBIT C

May 21, 2024

Via Certified Mail

Labor & Workforce Development Agency
By electronic submission

Driveline Retail Merchandising, Inc.
1141 E North Rd.
Taylorville, IL 62568

Defendants mailed certified # 9589071052700506686378

Trion Solutions II, Inc.
888 W Big Beaver, Suite 100
Troy, MI 48084

Defendants mailed certified #9589071052700506686385

Agent for Service of Driveline Retail Merchandising, Inc.
Registered Agent Solutions, Inc.
Jackson Yang
720 14th St.,
Sacramento, CA 95814

Agent mailed certified # 9589071052700506686392

Agent for Service of Trion Solutions II, Inc.
Cogency Global, Inc.
Erin Haggerty
1325 J Street, Suite 1550
Sacramento, CA 95814

Agent mailed certified # 9589071052700506686408

Re: ***Labor Code Violations of Driveline Retail Merchandising, Inc., – Compliance
Letter of California Labor Code § 2698, the Private Attorneys General Act of
2004
LWDA-CM-966256-23***

Dear LWDA:

This letter supplements our previous correspondence sent on July 6, 2023 and alleges claims against an additional Defendant.

This office represents Marissa Silva, a former non-exempt California employee of Driveline Retail Merchandising, Inc. and Trion Solutions II, Inc. (collectively, “Defendants”). We write this letter in compliance with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Driveline Retail Merchandising, Inc.
Trion Solutions II, Inc.
Registered Agent Solutions, Inc.
Cogency Global, Inc.
May 21, 2024
Page 2

Our client was employed by Defendants in Northern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to our client and their other non-exempt California employees (“Aggrieved Employees”).

Our client alleges that Defendants failed to pay her and other Aggrieved Employees all minimum and overtime wages earned during the course of employment, in violation of Labor Code §§ 510, 558, 1194, and 1194.2 and IWC Wage Order 7-2001, section 4. Our client and other Aggrieved Employees were paid \$10.00 per hour – less than the applicable minimum wage. This resulted in our client and other Aggrieved Employees being paid significantly less than what is required by law. Defendants also failed to retain accurate records in accordance with Labor Code §§ 1174 and 1174.5, including for employees’ start and end times for every shift. These instances violate Labor Code §§ 510, 558, 1174, 1174.5, 1194, and 1194.2 and IWC Wage Order No. 7-2001.

Defendants required our client and other Aggrieved Employees to be on-call, under Defendants’ control, with substantial restrictions, without pay. Defendants did not compensate them for time spent on-call, notwithstanding the fact they were subject to Defendants’ control during this on-call time. Defendants also required our client and other Aggrieved Employees to drive to multiple jobsites in a day, but did not compensate them for time spent driving between stores, notwithstanding the fact they were subject to Defendants’ control during this time. An employer is obligated to pay the wages of an hourly employee for all time that the employee is under the control of her employer, and this includes all the time the employee is suffered or permitted to work, whether or not required to do so. When our client and other Aggrieved Employees were on-call or driving to different jobsites, they were under the control of Defendants and required to be compensated for all hours worked. Defendants, however, failed to do so. These instances deprived our client and other non-exempt Aggrieved Employees of significant hours worked and minimum and overtime wages due. Defendants also failed to retain accurate records in accordance with Labor Code §§ 1174 and 1174.5, including for employees’ start and end times for every shift, including, but not limited to, standby/on-call shifts. These constitute violations of Labor Code §§ 510, 558, 1174, 1174.5, 1194, and 1194.2 and IWC Wage Order 7-2001.

Our client alleges that Defendants failed to properly compute bonuses, shift differential wages, and/or other non-base hourly wages earned by her and other Aggrieved Employees into their regular rate of pay for purposes of paying them meal and rest period premiums, overtime wages, vacation wages, and sick pay wages at the correct rates, in violation of Labor Code §§ 226.7, 246, 510, 512, 558, and 1194. Defendants paid our client and other Aggrieved Employees bonuses, shift differential wages, and/or other non-base hourly wages; however, Defendants failed to properly blend these forms of pay, and instead pay our client and other Aggrieved Employees meal and rest period premiums, overtime wages, vacation wages, and sick pay wages based *only* on the base hourly rate of pay, thus depriving our client and other Aggrieved Employees of all meal and rest period premiums, overtime wages, vacation wages, and sick pay wages earned. This violates Labor Code §§ 226.7, 246, 510, 512, 558, and 1194.

Driveline Retail Merchandising, Inc.
Trion Solutions II, Inc.
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May 21, 2024
Page 3

Defendants also failed to reimburse our client and other Aggrieved Employees for necessary business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor Code § 2802, including, but not limited to, the use of their personal vehicles. Labor Code § 2802 states that an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties. Defendants' failure to do so violates this section.

Our client alleges that Defendants failed to pay correct premium wages to her and other Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 7-2001. Our client and other Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. Our client and other Aggrieved Employees were frequently too busy to take a rest period. When they were able to take a rest period, they were oftentimes late, cut short, or on-duty. This violates Labor Code § 226.7 and IWC Wage Order No. 7-2001.

Defendants failed to pay correct premium wages to our client and other Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 7-2001. Our client and other Aggrieved Employees were routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first or second meal period. When they were able to take a meal period, they are oftentimes late, cut short, or on-duty. Defendants also failed to retain accurate records in accordance with Labor Code §§ 1174 and 1174.5, including for employees' start and end times for meal periods. This violates Labor Code §§ 226.7, 512, 558, 1174, and 1174.5 and IWC Wage Order 7-2001.

Our client further alleges that Defendants failed to provide her and all other Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Our client and other non-exempt Aggrieved Employees were not paid all wages due, as stated above. As such, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3. Moreover, and independent of the above allegations, the wage statements issued to our client and Aggrieved Employees list various hourly rates of pay, including regular pay and overtime pay, but fail to set forth the correct number of hours worked at each hourly rate and fail to set forth the correct rates of pay associated with each hourly rate, in violation of Labor Code § 226(a)(9). For example, when overtime hours are worked, the overtime rate listed is incorrect and the number of regular hours worked listed is incorrect. Additionally, because the number of hours worked at each hourly rate is listed incorrectly, and because duplicate hours worked are frequently listed, adding them together yields an incorrect count of total hours worked. There is no separate

Driveline Retail Merchandising, Inc.
Trion Solutions II, Inc.
Registered Agent Solutions, Inc.
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entry for total hours worked during the pay period. It is simply impossible to ascertain from the face of the wage statements the number of total hours worked for the pay period. This violates Labor Code § 226(a)(2).

Our client further alleges that Defendants failed to pay her and other Aggrieved Employees all wages due, including all accrued, but unused vacation wages, at the separation of their employment based on the time frames required by Labor Code §§ 201-202 and 227.3. As stated above, our client and other Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. Furthermore, when our client was terminated, she was not issued her final pay at the time of termination. Instead, she was issued her final wages several days later. This violates Labor Code §§ 201-202 and 227.3 and is alleged on behalf of our client and certain Aggrieved Employees no longer employed by Defendants.

Very truly yours,

GAINES LAW CORPORATION

By : 

EVAN S. GAINES

cc: Yvette Davis, Esq. (by e-mail only)
Doug Bracken, Esq. (by e-mail only)

EXHIBIT D

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

Subject to the approval of the Court, this Settlement Agreement (“Settlement Agreement” or “Settlement”) is made and entered into between Plaintiff **Marissa Silva**, acting in a private attorney general capacity, on behalf of the State of California on behalf of herself and all PAGA Settlement Employees, and Defendants **Driveline Retail Merchandising, Inc.** and **Trion Solutions, II, Inc.** (collectively, Plaintiff and Defendants are referred to as the “Parties”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the matter entitled *Marissa Silva v. Driveline Retail Merchandising, Inc., et al.*, pending in the Imperial County Superior Court of the State of California, Case No. ECU003111.
2. “Complaint” means the First Amended Complaint in the Action.
3. “Defendants” means Defendants Driveline Retail Merchandising, Inc. and Trion Solutions, II, Inc.
4. “Effective Date” of the Settlement means the date upon which the Court enters the Final Order.
5. “Final Order” refers to the order of the Court granting approval of this PAGA Settlement Agreement on substantially the terms provided herein or as may be modified by subsequent agreement of the Parties and entry of judgment.
6. “PAGA Gross Settlement Amount” is the sum of Two Hundred Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00), which represents the total amount payable by Defendants under this Settlement Agreement for the release of the Released Claims and includes payments to all PAGA Settlement Employees, payment to the LWDA, payment of Plaintiff’s attorneys’ fees and costs, payment to the Settlement Administrator, and payment to Plaintiff for Plaintiff’s Service Award.
7. “Individual PAGA Payment” means the pro rata amount to be paid to each PAGA Settlement Employee from the twenty-five percent (25%) portion of the PAGA Payment allocated to employees; such individual share to be based on the number of pay periods during which a PAGA Settlement Employee worked for Defendants during the PAGA Period.
8. “LWDA” means the California Labor and Workforce Development Agency.
9. “LWDA Letters” means the letters Plaintiff submitted to the LWDA on July 5, 2023, and May 21, 2024.
10. “Net Settlement Amount” or “PAGA Payment” is the amount remaining to distribute to the LWDA and PAGA Settlement Employees after the following amounts, if approved by the Court, are subtracted from the PAGA Gross Settlement Amount: (a) Plaintiff’s

Attorneys' Fees of up to 40% of the PAGA Gross Settlement Amount (projected to be Ninety Thousand Dollars and Zero Cents (\$90,000); (b) Plaintiff's Costs up to Ten Thousand Dollars and Zero Cents (\$10,000.00); (c) Plaintiff's Service Award up to Five Thousand Dollars and Zero Cents (\$5,000.00); and (c) PAGA Settlement Administration costs not to exceed Five Thousand Seven Hundred Fifty Dollars and Zero Cents (\$5,750.00).

11. "Parties" means Plaintiff and Defendants.

12. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*

13. "PAGA Period" means the time period from July 6, 2022 through October 25, 2024. As of October 25, 2024, Defendants estimated there were approximately 9,099 pay periods worked during the PAGA Period by approximately 969 PAGA Settlement Employees. Final updated figures will be provided to the Settlement Administrator following the approval of the settlement.

14. "PAGA Representative Counsel" means Gaines Law Corporation, located at 4550 East Thousand Oaks Boulevard, Suite 100, Westlake Village, California 91362.

15. "PAGA Settlement Employee" or "PAGA Settlement Employees" means and includes all current and former non-exempt employees who worked for Defendants in the State of California during the PAGA Period.

16. "Plaintiff" means Marissa Silva.

17. "Service Award" means the amount payable to Plaintiff in recognition of her efforts and work in prosecuting the Action, in the amount of Five Thousand Dollars (\$5,000.00) to be approved by the Court.

18. "QSF" means qualified settlement fund.

19. "Released Claims" means all claims, rights, demands, liabilities, and causes of action for civil penalties recoverable under PAGA, that were asserted or could have been asserted, assessed upon or collected from the Released Parties by or on behalf of Plaintiff, the PAGA Settlement Employees, the LWDA, the State of California, or any of its agencies, based on any of the facts or violations alleged in the Complaint or LWDA Letters, including claims for PAGA civil penalties under or based on any alleged violations of Labor Code sections: 201, 202, 226(a), 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1194, and 2802, and 2699, *et seq.*, the violation of any Industrial Welfare Commission Order, and any other claims asserted in the Action and operative Complaint.

20. "Released Parties" means Defendants Driveline Retail Merchandising, Inc. and Trion Solutions, II, Inc., their past and present officers, directors, shareholders, unit holders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys from all claims, demands, rights and liabilities as set forth above.

21. "Settlement Administrator" means Phoenix Settlement Administrators.

22. “PAGA Settlement Administration Costs” means the cost, not to exceed Five Thousand Seven Hundred Fifty Dollars and Zero Cents (\$5,750.00), to be paid to the Settlement Administrator for administering the Settlement, including sending checks and Settlement Notices to the PAGA Settlement Employees.

23. “Settlement Notice” means an explanatory letter to be sent by the Settlement Administrator to PAGA Settlement Employees, substantially in the form attached hereto as **Exhibit A**.

II. RECITALS

1. On July 5, 2023, and May 21, 2024, Plaintiff provided written notice to the LWDA and Defendants pursuant to Labor Code section 2699.3 of alleged violations of the California Labor Code and Industrial Welfare Commission Orders.

2. On September 11, 2023, Plaintiff filed the Action, pursuant to PAGA, on behalf of the State of California and other aggrieved employees alleging multiple violations of the California Labor Code and Industrial Welfare Commission Wage Orders by Defendants. Plaintiff filed her First Amended Complaint on August 6, 2024.

3. Defendants generally deny all of Plaintiff’s allegations in the Action, including all PAGA claims, and further specifically deny that Defendants or any of the Released Parties committed or engaged in any misconduct, statutory or regulatory violations, wrongdoing, or other actionable conduct of any kind.

4. The Parties have independently analyzed and investigated the facts and law relevant to this case through informal discovery and substantial pre-mediation disclosures, including, but not limited to, the employment policies, procedures, and practices implicated by the Complaint and/or the LWDA Letters; a sampling of all timekeeping and payroll records for employees on whose behalf the Complaint and/or the LWDA Letters are asserted by Plaintiff; and summaries of data pertaining to the number of employees allegedly affected by the policies, procedures, and practices implicated by the Complaint and/or the LWDA Letters.

5. After evaluating the strengths and weaknesses of their respective positions, after considering the time, expense, and risk associated with litigating this case to judgment, and after engaging in arm’s-length settlement negotiations through informed counsel, and two mediation sessions before a highly experienced PAGA mediator, Brandon McKelvey, Esq., the Parties agreed to fully and finally, and exclusively, resolve the Released Claims as to Plaintiff and the PAGA Settlement Employees, subject to Court approval.

6. This Settlement contemplates the entry of an Order by the Court approving the payment allocated for settlement of PAGA penalties to the LWDA, Plaintiff and PAGA Settlement Employees, and the dismissal with prejudice of the Action.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement Agreement or the judgment to be entered in this Action pursuant to the terms of this Settlement Agreement shall be construed to be an admission: (1) by Plaintiff that her claims do not have merit or (2) by Defendants of any liability or wrongdoing as to Plaintiff, the PAGA Settlement Employees or any other person, and Defendants generally deny any such liability or wrongdoing. Defendants specifically deny any liability to Plaintiff or any other allegedly aggrieved employee or PAGA Settlement Employee for any alleged violation of his/her/their rights, or for any alleged violation of any order, law, statute, duty or contract. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **PAGA Gross Settlement Amount.** Defendants shall collectively pay Two Hundred Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00) as the PAGA Gross Settlement Amount. Defendant Trion shall be obligated to make a payment in the amount of \$68,877.55. Defendant Driveline shall be obligated to make a payment in the amount of \$156,122.45. Defendants will not pay more than the PAGA Gross Settlement Amount to resolve the claims covered by this Agreement, except as otherwise stated in this Agreement. Defendants shall deposit the PAGA Gross Settlement Amount with the Settlement Administrator within 30 days of the Effective Date.

3. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the PAGA Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to be distributed to the LWDA and PAGA Settlement Employees:

- a. **Plaintiff's Attorneys' Fees and Costs.** Defendants will not oppose Plaintiff's request for Plaintiff's Attorneys' Fees of up to 40% of the PAGA Gross Settlement Amount (projected to be Ninety Thousand Dollars and Zero Cents (\$90,000.00)) and Plaintiff's Costs up to Ten Thousand Dollars (\$10,000.00) incurred in prosecuting this Action. In the event the Court approves a payment of less than the amount of fees and costs requested by Plaintiff, the difference will be added to the PAGA Payment.
- b. **Administration Cost.** Defendants will not oppose the Settlement Administrator's costs, not to exceed Five Thousand Seven Hundred Fifty Dollars and Zero Cents (\$5,750.00), for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the PAGA Payment.
- c. **Plaintiff's Service Award Payment:** Defendants will not oppose a request for service payment to Plaintiff in an amount up to Five Thousand Dollars and Zero Cents (\$5,000.00) in recognition of her efforts and work in

prosecuting this Action. In the event the Court approves a payment of less than this amount, the difference will be added to the PAGA Payment.

4. **PAGA Payment.** A portion of the PAGA Payment will be allocated to the LWDA and the remainder will be allocated to PAGA Settlement Employees in settlement of the Released Claims. The PAGA Payment will be subject to Court approval consistent with California Labor Code section 2699.3(b)(4). Upon approval, the PAGA Payment shall be allocated as follows:

- a. Seventy-five percent (75%) will be paid to the LWDA, as required by California Labor Code section 2699(i).
- b. Twenty-five percent (25%) will be paid to the PAGA Settlement Employees, divided on a pro rata basis among them and distributed by the Settlement Administrator as Individual PAGA Payments, as required by California Labor Code section 2699(i).
- c. The payments will be reported as penalties on IRS Forms 1099 issued to the LWDA and each PAGA Settlement Employee. The Settlement Administrator will be responsible for issuing to PAGA Settlement Employees and PAGA Representative Counsel any 1099 or other tax forms as may be required by law for all amounts paid pursuant to this Settlement.

5. **Representative PAGA Release.** Upon the Effective Date, Plaintiff, as an individual, and as the representative of the PAGA Settlement Employees, the LWDA and the State of California, hereby forever and completely releases and discharges the Released Parties of and from all of the Released Claims, and thus, Plaintiff, the PAGA Settlement Employees, LWDA and the State of California will be forever barred from pursuing any of the Released Claims defined herein against Released Parties which arose during periods of employment in a non-exempt position in California during the PAGA Period. The Parties understand and agree that this release is limited to the Released Claims and does not otherwise impact the individual rights or claims of the PAGA Settlement Employees. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985, a judgment in “a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding,” which the Final Order shall so reflect. Pursuant to *Arias* and *Cardenas v. McLane Foodservice, Inc.*, 796 F.Supp.2d 1246 (2011), the Final Order and judgment in this Action shall be binding on the PAGA Settlement Employees, LWDA, State of California and its agencies as to the Released Claims which arose during the PAGA Period, regardless of whether their settlement checks are cashed or not. The Parties further understand and agree that the continued effectiveness of this PAGA Release is contingent upon Defendants’ payment of the PAGA Gross Settlement Amount. If either Defendant defaults on any of their payment obligations under this Agreement, the PAGA Release set forth in this paragraph shall become ineffective as to that Defendant until such default is cured in full.

6. **Separate Release and Individual Settlement by Plaintiff.** In addition to this Agreement, Plaintiff has entered into a separate Confidential Settlement Agreement And General Release Of All Claims (“Individual Settlement Agreement”) with Defendants for all of her separate

individual (non-PAGA) and termination claims arising out of her employment with Defendants, in exchange for a full release of those claims. The Parties acknowledge and agree that the Individual Settlement Agreement and the covenants, promises and released claims contained therein shall not serve to modify or limit Plaintiff's right to continue with this Action and seek the Court's approval of this PAGA Settlement; however, Plaintiff shall have no right to be the representative of a class action lawsuit against Defendants. The Parties further agree that if for any reason the Effective Date does not occur with regard to this Settlement and/or the Final Order is not entered, then the Individual Settlement Agreement shall also be null and void.

7. Resolution of Claims Between Driveline and Trion:

As part of this settlement, Driveline and Trion mutually agree to release, discharge, and hold harmless each other from any and all claims, demands, actions, or causes of action, whether known or unknown, that may arise out of or relate to any contract, indemnity, or joint employer obligations between them related to this matter and this settlement. This release includes any potential claims by Driveline against Trion and by Trion against Driveline, in exchange for their respective contributions of \$170,000 (Driveline) and \$75,000 (Trion) toward the settlement in this matter and this settlement, as adjusted in accordance with this settlement agreement. Both parties acknowledge that this release fully and finally resolves all contract, indemnity, and joint employment claims between them related to this matter, without any further obligations or liabilities.

8. Filing of Request for Approval of PAGA Settlement by Plaintiff's Counsel

Plaintiff's counsel shall be responsible for filing a joint stipulation for approval of the Settlement. Plaintiff shall provide the requisite notice of this Settlement Agreement to the LWDA on or before the date Plaintiff requests approval of this Settlement Agreement from the Court. If the Court approves this Settlement, the Parties shall request that the Court enter a Final Order approving the settlement.

As part of the request to approve the Settlement, Plaintiff shall submit a proposed Order granting approval of this Settlement. The Court shall retain jurisdiction to enforce the terms of this Agreement. This Settlement is expressly conditioned upon the Court entering such a Final Order, approving this Settlement as set forth herein, and entry of judgment, disposing of the Action in its entirety and ensuring that this Settlement has a *res judicata* effect.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Settlement Administrator will be responsible for establishing a QSF and issuing payments and appropriate tax forms to PAGA Settlement Employees, the LWDA, and Plaintiff's counsel.

2. **Provision of Information for PAGA Settlement Employees.** Within twenty (20) calendar days after the Effective Date, Defendants will provide the information regarding the PAGA Settlement Employees to the Settlement Administrator. This information will include the name, most recently known address, social security number, and total pay periods worked by each of the PAGA Settlement Employees in a non-exempt position in California during the PAGA

Period. The Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

The Settlement Administrator will calculate the amount to be received by each PAGA Settlement Employee. Within ten (10) calendar days of the Effective Date, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual settlement payments to each PAGA Settlement Employee, and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for PAGA Settlement Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the PAGA Settlement Employees' addresses.

Within ten (10) calendar days of receiving the PAGA Gross Settlement Amount, the Settlement Administrator will issue payments to: (a) PAGA Settlement Employees along with an explanatory letter accompanying the payment ("Settlement Notice"); (b) the LWDA; (c) Plaintiff's counsel; (d) itself; and (e) Plaintiff for her Service Award Payment. The Settlement Notice shall be mailed to each PAGA Settlement Employee with their disbursement.

4. **Undeliverable Notices.** Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip trace, or other search using the name, address or social security number of the PAGA Settlement Employees involved, and will then perform a single re-mailing. Individual PAGA Payment checks will remain negotiable for one hundred eighty (180) calendar days from issuance, and PAGA Settlement Employees will have one hundred eighty (180) calendar days from the date of issuance to cash their Individual PAGA Payment checks. If a PAGA Settlement Employee's check is returned to the Settlement Administrator with a forwarding address provided by the United States Postal Service, the Settlement Administrator will promptly resend the check to that PAGA Settlement Employee to that address, but this re-mailing will not extend the 180-day period to cash a check. Funds represented by Individual PAGA Payment checks returned as undeliverable and those Individual PAGA Payment checks remaining un-cashed for more than one hundred eighty (180) calendar days after issuance will be paid to the California State Controller in the name of the PAGA Settlement Employee who did not cash the check, from which the PAGA Settlement Employee may claim the funds. Neither Defendants, Defense Counsel, Plaintiff's Counsel nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, unauthorized negotiation of settlement checks or failure to timely cash a settlement check within the 180-day period.

Defendants fully discharge their obligations to those PAGA Settlement Employees who are entitled to an Individual PAGA Payment through the Settlement Administrator's mailing of a check, regardless of whether such checks are actually received and/or negotiated by PAGA Settlement Employees.

5. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed one hundred percent (100%) as penalties and paid via IRS Form 1099 issued to each PAGA Settlement Employee. The Parties and their counsel make no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

1. **Escalator Clause.** Defendants originally estimated that there were approximately 7,296 pay periods worked during the PAGA Period following the initial mediation. Defendants have subsequently determined that through the date of the second mediation, October 25, 2024, there were 9,099 pay periods worked by approximately 969 PAGA Settlement Employees. Accordingly, the number of pay periods at issues has increased by 24%, and the Gross Settlement Amount shall increase by 14%, adding \$31,500 to the Gross Settlement Amount set forth in Paragraph III.2. If this estimate as to the number of pay periods through the date of mediation be inaccurate, this will increase the PAGA Gross Settlement Amount proportionally. Defendants agree to pay any additional amounts in proportion to the agreed upon settlement payment as set forth in Paragraph III.2, with Driveline paying an additional \$21,861 and Trion paying an additional \$9,639.

2. **Mutual Preparation and Drafting.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties through informed counsel and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

3. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, and successors and assigns.

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

5. **Authority.** Defendants represents and warrants that the undersigned have the authority to act on behalf of Defendants and to bind Defendants to the terms of this Settlement Agreement.

6. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California.

7. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA Claims. Excluded from this Section is a separate settlement agreement related to Plaintiff's individual claims. This Settlement Agreement cannot be amended or modified except by a writing signed by the Parties hereto.

8. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions, without prejudice. Neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect.

9. **Continuing Jurisdiction.** After approval of this Settlement and entry of the judgment in the Action, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement and judgment, (ii) Settlement administration matters, and (iii) such matters as may be appropriate under court rules or as set forth in this Settlement Agreement. The Parties further agree that this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure Section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and PAGA Settlement Employees to interpret and enforce the terms, conditions and obligation of the Agreement.

10. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest.

11. **Binding on Successors and Assigns.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

12. **Execution and Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile, DocuSign, and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

13. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement.

14. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement Agreement valid and enforceable. Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

15. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the

invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

16. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

17. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

18. **Dispute(s).** Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to the Court. To the extent any Party seeks to enforce any of the terms of this Agreement in or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

19. **Non-Evidentiary Use.** Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Action or in any other action or proceeding except for purposes of establishing the Released Claims have been settled; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement.

20. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

21. **No Public Comment.** Neither the Parties nor their counsel shall make or issue any public statements to the press or any other third party, nor post any information on websites or other public forums, concerning the Action in any way.

22. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

23. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

24. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing

on the part of Defendants. Nothing in this settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any court proceeding that has as its purpose the interpretation, implementation or enforcement of the settlement or any orders or judgments of the Court entered into in connection therewith.

25. **Time is of the Essence**. Time is of the essence with respect to all provisions of this Agreement.

IN WITNESS THEREOF, the Parties each acknowledge that he/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences.

[SIGNATURES ON FOLLOWING PAGE]

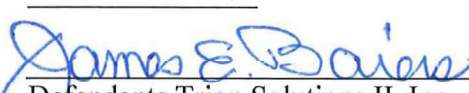
Dated: _____

By: _____
Plaintiff Marissa Silva

Dated: February 3, 2025

By: 
Defendants Driveline Retail Merchandising, Inc.
Lori Bennett, CFO CHCO

Dated: February 1, 2025

By: 
Defendants Trion Solutions II, Inc.
James E. Baiers, Chief Legal Officer

Approved as to form:

GAINES LAW CORPORATION

Dated: _____

Evan S. Gaines, Esq.
Attorneys for Plaintiff Marissa Silva

HAIGHT BROWN & BONESTEEL LLP

Dated: Feb 10, 2025



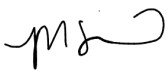
Yvette Davis, Esq.
Attorneys for Defendants Driveline Retail Merchandising, Inc.

LITTLER MENDELSON, P.C.

Dated: _____

Robert S. Blumberg, Esq.
Attorneys for Defendant Trion Solutions II, Inc.

Dated: February 10, 2025

By: 
Plaintiff Marissa Silva

Dated: _____

By: _____
Defendants Driveline Retail Merchandising, Inc.

Dated: _____

By: _____
Defendants Trion Solutions II, Inc.

Approved as to form:

Dated: February 10, 2025

GAINES LAW CORPORATION


Evan S. Gaines, Esq.
Attorneys for Plaintiff Marissa Silva

HAIGHT BROWN & BONESTEEL LLP

Dated: _____

Yvette Davis, Esq.
Attorneys for Defendants Driveline Retail
Merchandising, Inc.

LITTLER MENDELSON, P.C.

Dated: _____

Robert S. Blumberg, Esq.
Attorneys for Defendant Trion Solutions II,
Inc.

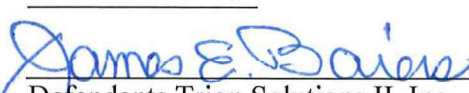
Dated: _____

By: _____
Plaintiff Marissa Silva

Dated: February 3, 2025

By: 
Defendants Driveline Retail Merchandising, Inc.
Lori Bennett, CFO CHCO

Dated: February 1, 2025

By: 
Defendants Trion Solutions II, Inc.
James E. Baiers, Chief Legal Officer

Approved as to form:

GAINES LAW CORPORATION

Dated: _____

Evan S. Gaines, Esq.
Attorneys for Plaintiff Marissa Silva

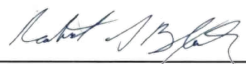
HAIGHT BROWN & BONESTEEL LLP

Dated: _____

Yvette Davis, Esq.
Attorneys for Defendants Driveline Retail
Merchandising, Inc.

LITTLER MENDELSON, P.C.

Dated: February 3, 2025



Robert S. Blumberg, Esq.
Attorneys for Defendant Trion Solutions II,
Inc.

EXHIBIT E

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_____ (For messenger) my business address is:

Yvette Davis, Esq.
HAIGHT BROWN & BONESTEEL LLP
2030 Main Street, Suite 1525
Irvine, CA 92614

Douglas Bracken
dbracken@krcl.com
KANE RUSSELL COLEMAN LOGAN PC
901 Main Street, Suite 5200
Dallas, Texas 75202
Attorneys for Driveline Retail Merchandising, Inc.

Robert S. Blumberg, ESQ. - rblumberg@littler.com
LITTLER MENDELSON, P.C.
2049 Century Park East, 5th Floor
Los Angeles, California 90067.3107

Melanie Rollins, ESQ. - mrollins@littler.com
LITTLER MENDELSON, P.C.
633 West Fifth Street, 63rd Street
Los Angeles, California 90071
Attorneys for Defendant
TRION SOLUTIONS II, INC.

 X (UPLOADED TO LWDA WEB PORTAL) I caused the above-described documents to be delivered to the Labor & Workforce Development Agency via online process at the PAGA Filing website (www.dir.ca.gov) in accordance with the procedure imposed by the LWDA.

I declare under penalty of perjury that the foregoing is true and correct.

EVAN S. GAINES, ESQ.