

Miriam L. Schimmel (State Bar No. 185089)
mschimmel@blackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
Jared C. Osborne (State Bar No. 335968)
josborne@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

*Attorneys for Plaintiff BRANDON GESTON,
individually, and on behalf of Aggrieved
Employees pursuant to the California Private
Attorneys General Act*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

BRANDON GESTON, individually, and on
behalf of Aggrieved Employees pursuant to the
California Private Attorneys General Act,

Plaintiffs,

vs.

FRTO LLC, a California Limited Liability
Company; FRGM LLC, a California Limited
Liability Company; and VWOC LLC, a
California Limited Liability Company; and
DOES 1 through 25, inclusive,

Defendants.

Case No. 24CECG01292

Honorable Lisa Gamoian
Department 403

**DECLARATION OF ALEXANDRA ROSE IN
SUPPORT OF PLAINTIFF'S MOTION FOR
APPROVAL OF PAGA SETTLEMENT AND
AWARD OF PAGA COUNSEL FEES
PAYMENT, PAGA COUNSEL LITIGATION
EXPENSES PAYMENT, AND
ADMINISTRATION EXPENSES PAYMENT**

Date: May 7, 2025
Time: 3:30 p.m.
Department: 403

Complaint Filed: March 25, 2024
Trial Date: Not Set

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. I am an attorney admitted to practice in all Courts of the State of California. I am a member of Blackstone Law, APC (“PAGA Counsel”), attorneys of record for Plaintiff Brandon Geston (“Plaintiff”). I submit this declaration in support of Plaintiff’s Motion for Approval of PAGA Settlement and PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and Administration Expenses Payment (“Motion”). I have personal knowledge of the facts contained herein, and, if called to testify, I could and would competently do so.

2. Defendants FRGM LLC, FRT0 LLC, and CLVW LLC (collectively, “Defendants”) are a collection of car dealerships and a car collision center that are operated under Blackstone Automotive Group. Plaintiff was employed by one or more of the Defendants as an hourly-paid and/or non-exempt Vehicle Salesperson from approximately June 2022 through December 2023.

4. On February 27, 2024, Plaintiff filed a Class Action Complaint in the action entitled *Brandon Geston v. FRTO LLC, et al.*, Fresno County Superior Court Case No. 24CECG00875 (“Class Action”), thereby commencing a putative class action against FRTO LLC, FRGM LLC, and VWOC LLC.

///

1 6. On May 16, 2024, pursuant to Plaintiff's request, the court in the Class Action entered
2 an Order, which named CLVW LLC dba Volkswagen of Clovis as DOE 1.

3 7. On May 30, 2024, Defendants filed a Motion to Compel Arbitration and supporting
4 documents in the Class Action.

5 8. On June 4, 2024, Plaintiff provided an amended written notice by electronic submission
6 to the LWDA and by U.S. Certified Mail to Defendants. A true and correct copy of the June 4, 2024
7 notice is attached hereto as **Exhibit 2**.

8 9. On June 12, 2024, pursuant to Plaintiff's request, the Court in the Action entered an
9 Order, which named CLVW LLC dba Volkswagen of Clovis as DOE 1.

10 10. On June 27, 2024, Defendants filed a Motion to Compel Arbitration and supporting
11 documents in the Action.

12 11. On July 5, 2024, pursuant to Plaintiff's request, the Court in the Action entered an
13 Order, which dismissed VWOC LLC without prejudice.

14 12. On July 11, 2024, Defendants filed a Notice of Withdrawal of Defendants' Motion to
15 Compel Arbitration in the Class Action.

16 13. On July 18, 2024, pursuant to Plaintiff's request, the court in the Class Action entered
17 an Order, which dismissed VWOC LLC without prejudice and the class claims against Defendants
18 without prejudice.

19 14. On September 6, 2024, Plaintiff filed an Opposition to Defendants' Motion to Compel
20 Arbitration in the Action.

21 15. On December 4, 2024, Plaintiff and Defendants (collectively, the "Parties")
22 participated in a formal mediation conducted by Tagore Subramaniam, Esq., a neutral and respected
23 mediator with extensive experience in complex wage and hour matters, during which the Parties were
24 able to reach an agreement to resolve the Action in its entirety along with Plaintiff's individual claims
25 alleged in the Class Action.

26 16. On February 24, 2025, pursuant to the Parties' joint stipulation, the Court in the Action
27 took Defendants' Motion to Compel Arbitration off calendar.

28 ///

1 17. On April 4, 2025, the Parties executed the PAGA Settlement Agreement (“Settlement,”
2 “Agreement,” or “Settlement Agreement”). A true and correct copy of the Settlement Agreement is
3 attached hereto as **Exhibit 3**.

4 18. During the course of informal discovery in the Action, PAGA Counsel conducted an
5 intense investigation into the facts of the Action. This included obtaining data, information, and
6 documents relating to the underlying alleged violations, including, but not limited to, Plaintiff’s
7 employee file, a sampling of the Aggrieved Employees’ time and payroll data, relevant wage and hour
8 policies, and Aggrieved Employees’ data points so that Plaintiff could assess the number of alleged
9 potential violations and value of the recoverable penalties, as well as evaluate the strengths and
10 weaknesses of his claims.

11 19. Based on the data, information, and documents received, as well as thorough
12 discussions with Defendants’ counsel, PAGA Counsel was able to (i) determine the total number of
13 distinct individuals falling within the definition of “Aggrieved Employees” for the relevant statutory
14 period, (ii) the number of affected pay periods at issue among them, and (iii) construct a damages
15 model that calculated the maximum realistic amount of PAGA penalties that could be levied against
16 Defendants within the relevant statutory period. Defendants, however, disputed Plaintiff’s claims and
17 disputed both the existence of and extent of liability as alleged by Plaintiff, which allowed PAGA
18 Counsel to further assess the strength of Plaintiff’s claims. PAGA Counsel’s experience in litigating
19 similar representative wage and hour claims, the degree of investigation that was conducted here, and
20 the amount of data, information, and documents that was obtained, was sufficient to determine the
21 potential value of the PAGA claims, and to evaluate the strength of these claims for purposes of
22 settlement.

23 20. The Parties believe the Settlement Agreement is fair, reasonable, and adequate. The
24 Parties understand, acknowledge, and agree that the Settlement Agreement constitutes a compromise
25 of Plaintiff’s PAGA claims, and that it is the desire and intention of the Parties to affect a final and
26 complete resolution of the Action.

27 ///

28 ///

21. Defendants deny all of the claims in the Action, and do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations upon all legal, procedural, and factual grounds should the Settlement Agreement not become final. The Settlement Agreement reflects a compromise reached to end litigation in the Action. Following significant investigation and extensive settlement negotiations, Plaintiff now seeks approval of the proposed Settlement Agreement, which will resolve all representative claims alleged in the Action.

Notice to the LWDA

22. In accordance with California Labor Code sections 2699 *et. seq.*, a copy of the proposed Settlement Agreement was submitted to the LWDA via online submission through the LWDA's website on April 8, 2025. A true and correct copy of the email from the LWDA confirming receipt is attached hereto as **Exhibit 4**.

Summary of the Terms of the Settlement Agreement

23. For purposes of settlement only, the Parties have agreed that the "Aggrieved Employees" shall be defined as "all current and former hourly-paid and/or non-exempt employees who worked for Defendants in the State of California at any time during the PAGA Period." The "PAGA Period" is the period from January 16, 2023 to January 3, 2025. There are approximately five hundred fifty-two (552) Aggrieved Employees.

24. The Parties have agreed to settle the PAGA claims at issue in the Action for a Gross Settlement Amount of Four Hundred Forty Thousand Dollars and Zero Cents (\$440,000.00). The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. The Gross Settlement Amount includes: (1) PAGA Counsel's fee award in the amount of thirty-five percent (35%) of the Gross Settlement Amount, currently estimated to be One Hundred Fifty-Four Thousand Dollars and Zero Cents (\$154,000.00); (2) PAGA Counsel's actual litigation costs and expenses in the amount of Nineteen Thousand Five Hundred Eighty-Two Dollars and Three Cents (\$19,582.03); and (3) the Administration Expenses Payment, not to exceed Six Thousand Dollars and Zero Cents (\$6,000.00).

///

///

1 25. After the above-estimated amounts are deducted from the Gross Settlement Amount,
2 the Net Settlement Amount will amount to approximately Two Hundred Sixty Thousand Four
3 Hundred Seventeen Dollars and Ninety-Seven Cents (\$260,417.97), of which seventy-five percent
4 (75%), or One Hundred Ninety-Five Thousand Three Hundred Thirteen Dollars and Forty-Eight Cents
5 (\$195,313.48), will be paid to the LWDA (“LWDA PAGA Payment”), and twenty-five percent (25%),
6 or Sixty-Five Thousand One Hundred Four Dollars and Forty-Nine Cents (\$65,104.49), will be
7 distributed and paid to Aggrieved Employees on a *pro rata* basis based upon the number of pay periods
8 they each worked for Defendants during the PAGA Period (“Pay PAGA Periods”).

9 26. Within or by fifteen (15) calendar days of the Effective Date, Defendants will
10 simultaneously deliver Aggrieved Employee identifying information in Defendants’ possession
11 including each Aggrieved Employee’s full name, last-known mailing address, Social Security number,
12 and number of PAGA Pay Periods (collectively, “Aggrieved Employee Data”).

13 27. No later than fifteen (15) calendar days after the Effective Date, Defendants will fully
14 fund the Gross Settlement Amount by transmitting the funds to the Administrator.

15 28. Within fifteen (15) calendar days after Defendants fund the Gross Settlement Amount,
16 the Administrator will distribute the Individual PAGA Payments (along with the Notice), the LWDA
17 PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the
18 PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Fees Payment
19 and PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA
20 Payments.

21 29. The Individual PAGA Payment checks issued to Aggrieved Employees will remain
22 valid and negotiable for one hundred and eighty (180) calendar days, and thereafter, will be canceled.
23 Any funds associated with such canceled checks will be distributed to the State Controller’s Office
24 Unclaimed Property Division in the name of the Aggrieved Employee.

25 30. Defendants have represented that 529 Aggrieved Employees worked approximately
26 10,091 pay periods during the period January 16, 2023 to December 4, 2024. If the actual number of
27 PAGA Pay Periods worked by the Aggrieved Employees during the PAGA Period is more than ten
28 percent (10%) above 10,091, the Gross Settlement Amount will be increased on a *pro rata* basis equal

1 to the percentage increase in the number of PAGA Pay Periods worked by the Aggrieved Employees
2 above 10%.

3 **The Agreement is Fair and Reasonable and Took Into Consideration the Strengths and**
4 **Weaknesses of Plaintiff's Claims and the Defenses thereto, as well as the Risks and Benefits of**
5 **the Agreement**

6 31. Here, the Agreement is presumptively fair because: (1) it occurred after counsel for the
7 Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA
8 claims, and the risks of litigating these claims through trial; and (2) it was negotiated at great length
9 and effort by counsel with significant experience in similar complex labor and employment matters.

10 32. This case and settlement address important employee protections embodied in the
11 California Labor Code. Plaintiff's core allegations are that Defendants systematically violated the
12 California Labor Code by, *inter alia*, failing to properly pay wages for all hours worked, failing to pay
13 overtime at the correct rate, failing to provide compliant meal and rest periods, failing to pay premiums
14 at the correct rate of pay, failing to timely pay wages during employment and upon termination, failing
15 to maintain accurate payroll records, failing to provide accurate wage statements, and failing to
16 reimburse necessary business expenses.

17 33. Defendants maintained several defenses to Plaintiff's theories of liability, which, if
18 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
19 Throughout this litigation, Defendants maintained, and continues to maintain, that they had, and
20 continue to have, compliant employment policies and practices throughout the time period at issue.
21 Defendants deny that they ever violated any provision of the California Labor Code, including, but
22 not limited to, those sections for which Plaintiff seeks penalties under PAGA. Defendants further
23 denied, and continue to deny, that the lawsuit is appropriate for representative treatment for any
24 purpose other than settlement. Defendants also challenged Plaintiff's standing as an aggrieved
25 employee and denied that any of Defendants' other employees whom Plaintiff seeks to represent are
26 aggrieved. Defendants also argued that an important feature of PAGA is that the Court retains
27 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to do
28 otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory."

1 34. Even if violations of the California Labor Code occurred, which Defendants deny,
2 Defendants contended that said violations would only be considered “initial violations” and thus
3 heightened “subsequent violation” penalties were not warranted.

4 35. Defendants also contended that, with respect to PAGA claims, the Court was unlikely
5 to assess cumulative penalties for the maximum number of possible, separate California Labor Code
6 violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where
7 certain conduct may be regulated by multiple provisions of the California Labor Code that are
8 interrelated and work in tandem.

9 36. While Plaintiff maintains that his PAGA claims have merit, in reaching the Agreement,
10 Plaintiff and his counsel took into account the strengths and weaknesses of each side’s position, and
11 the uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon
12 appeal. The Agreement achieves a sizeable benefit obtained.

13 37. Based on Defendants’ records, it was determined that approximately 529 Aggrieved
14 Employees worked a total of 10,091 pay periods during the time period between January 16, 2023 to
15 December 4, 2024 (“relevant time period”).

16 38. As set forth in the Motion, the California Labor Code does not set forth the criteria by
17 which a PAGA settlement is to be evaluated; it is presumed that a reviewing court may take into
18 consideration some of the factors that courts use when reviewing a class action settlement.¹ “[A]
19 PAGA claim asserted on a non-class representative basis...is not considered a class action but a law
20 enforcement action, and therefore does not have to meet the requirements of [a class action].” *Casida*
21 *v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302 at *8 (E.D. Cal. Jan. 25, 2012). However, a
22 discussion of the strengths and weaknesses of each claim, along with an estimate of the total potential
23 recovery is as follows:

24 ///

25 ///

26 ///

27 _____
28 ¹ As this is not a class action, the *Kullar* factors pertaining to the risk of maintaining class action status through trial and the reaction of class members to the proposed settlement are inapplicable.

1 *i. Unpaid Wages*

2 39. Plaintiff alleges that Defendants failed to compensate Plaintiff and the Aggrieved
3 Employees at their applicable minimum, regular, and overtime rates for their work, and failed to
4 compensate them for all hours that they worked. For example, Plaintiff and Aggrieved Employees
5 reported if they were already clocked out for the day, or were on their day off, but an appointment was
6 scheduled with a customer, then they would arrive at the dealership for the appointment, but their
7 supervisor would not allow them to clock in until the customer actually arrived. This would occur
8 approximately 2-3 times a month and they would wait on average 25-30 minutes off-the-clock for the
9 customer to arrive. Additionally, Plaintiff alleged that Defendants failed to pay overtime
10 compensation at the rate of one and one-half times the regular rate of pay by failing to include all non-
11 discretionary compensation into the regular rate calculation.

12 40. Defendants denied these claims, arguing that their overtime policies and practices
13 comply with California. Defendants further contended that their non-exempt employees were
14 responsible for accurately recording their own hours and that they were not aware that any work had
15 been performed off-the-clock. Defendants also argued that their overtime calculations lawfully
16 included all forms of compensation. Defendants also produced payroll data evidencing overtime paid
17 to their employees.

18 41. If a violation was found to have occurred in every one of the aggregate pay periods
19 within the relevant time period, the potential maximum exposure for this claim would be \$1,009,100.²

20 *ii. Meal Periods*

21 42. Plaintiff asserted that Defendants failed to provide employees with lawful meal periods.
22 For example, Plaintiff and Aggrieved Employees reported that they were frequently instructed by their
23 supervisor to assist customers who arrived in the lot while they were on their lunch breaks.
24 Additionally, Plaintiff alleged that if he was working on a deal with a customer in which he was about
25 to hit the end of his fifth hour of work, his supervisor would instruct him to clock out for a meal period
26

27 ² While the California Labor Code provides for \$100 for the first violation and up to \$250 for each subsequent violation
28 (depending on the underlying violation), Plaintiff used this simple computation of the total number of aggregate pay periods
times a \$100 penalty for analysis purposes only to account for the argument that the imposition of PAGA penalties is
discretionary and courts have the power to reduce or assess penalties based on the specifics of each case.

1 and continue to assist the customer.

2 43. Defendants argued that the Aggrieved Employees were permitted, if not encouraged,
3 to take their meal breaks. Defendants also argued that their written meal break policy was lawful and
4 employees' time records reflected that they took lawful meal periods. Moreover, litigating the meal
5 period claims would be inherently difficult as it would need to be proven that compliant meal periods
6 were not provided, but time records would not indicate whether or not a meal period was interrupted.

7 44. If a violation was found to have occurred in every one of the aggregate pay periods
8 within the relevant time period, the potential maximum exposure for this claim would be \$1,009,100.

9 *iii. Rest Periods*

10 45. Plaintiff argued that Defendants failed to schedule, permit, or authorize compliant rest
11 periods. For example, Plaintiff alleged that Plaintiff and other Aggrieved Employees were pressured
12 to not take rest breaks so as to not miss out on a deal (i.e., losing a possible commission on a sale from
13 not working with the customer). Here, Plaintiff faced the challenge of having to prove each alleged
14 rest period violation with only testimony from Aggrieved Employees.

15 46. If a violation was found to have occurred in every one of the aggregate pay periods
16 within the relevant time period, the potential maximum exposure for this claim would be \$1,009,100.

17 *iv. Unreimbursed Business Expenses*

18 47. Plaintiff alleged that Aggrieved Employees incurred necessary business expenses that
19 were never fully reimbursed by Defendants, including the purchase of COVID-19 testing kits and
20 work-related licenses.

21 48. Defendants contended that they had a policy and practice of reimbursing employees for
22 necessary business-related expenses. Defendants further contended that, with respect to the alleged
23 expenses for which Plaintiff and Aggrieved Employees never requested reimbursement from
24 Defendants, they did not know and had no reason to know that alleged business-related expenses had
25 been incurred.

26 49. If a violation was found to have occurred in every one of the aggregate pay periods
27 within the relevant time period, the potential maximum exposure for this claim would be \$1,009,100.

28 ///

1 v. *Derivative Claims*

2 50. As with all derivative claims, success depends on the success of the underlying claims.
3 Here, Plaintiff's claims for inaccurate wage statements, failure to pay all wages due during
4 employment and upon termination, and failure to keep requisite payroll records would only succeed if
5 the underlying claims for failure to pay wages for off-the-clock work, failure to pay overtime, and
6 failure to pay premiums for all meal and rest periods not lawfully provided were successful. Therefore,
7 these claims were subject to the same risks of failure as discussed above.

8 51. Again, if a violation was found to have occurred in every one of the aggregate pay
9 periods within the relevant time period, the potential maximum exposure for this claim would be
10 \$1,009,100.

11 vi. *Total PAGA Penalties*

12 52. PAGA Counsel considered information obtained through investigations and obtained
13 from Plaintiff and Aggrieved Employees, as well as data provided by Defendants, and created
14 valuation models. Based thereon and assuming that the Court would be satisfied that the PAGA claims
15 were susceptible to being efficiently tried and adjudicated on a representative basis, and that it could
16 be shown that civil penalties under the California Labor Code are owed of one penalty per pay period
17 during the relevant time period, Defendants' estimated total exposure in theory would exceed several
18 million dollars. However, PAGA Counsel considered the fact that, by law, the Court has the discretion
19 to reduce and/or assess lower penalties, that it was not clear that heightened penalties would apply,
20 and that stacking and/or cumulative penalties may not be allowed. Based thereon and the application
21 of one penalty per pay period in the relevant time period, the estimated total exposure was \$1,009,100.
22 PAGA Counsel then considered the defenses asserted, information and evidence obtained, and
23 circumstances in this case, which posed risks to representative adjudication and monetary recovery.
24 Accordingly, a discount of 30% was applied to account for the risks associated with proving the
25 underlying violations and the cost and delay in recovering the alleged potential penalties (bringing the
26 value of this claim closer to \$706,370), and a discount of 30% was applied to account for the risks
27 associated with succeeding on the merits and establishing liability (bringing the value of this claim
28 closer to \$494,459). In light thereof, the Gross Settlement Amount of \$440,000 is a significant

1 settlement.

2 **The Amount in the Settlement Agreement**

3 53. The Net Settlement Amount is currently estimated to be Two Hundred Sixty Thousand
4 Four Hundred Seventeen Dollars and Ninety-Seven Cents (\$260,417.97). After all deductions from
5 the Gross Settlement Amount are made for the PAGA Counsel Fees Payment, PAGA Counsel
6 Litigation Expenses Payment, and Administration Expenses Payment, One Hundred Ninety-Five
7 Thousand Three Hundred Thirteen Dollars and Forty-Eight Cents (\$195,313.48) (i.e. 75% of the Net
8 Settlement Amount) will go to the LWDA, and Sixty-Five Thousand One Hundred Four Dollars and
9 Forty-Nine Cents (\$65,104.49) (i.e. 25% of the Net Settlement Amount) will go to the Aggrieved
10 Employees, as required by California Labor Code § 2699(i) in effect at the time of this matter (“civil
11 penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor
12 and Workforce Development Agency . . . and 25 percent to the aggrieved employees.”). There is no
13 reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully
14 complies with California Labor Code section 2699(i).

15 54. The Settlement Agreement is a compromise of highly disputed claims. Plaintiff and
16 his counsel recognize the expense and length of continued proceedings necessary to litigate the matter
17 through trial and any possible appeals. Plaintiff and his counsel have also taken into account the
18 uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in
19 such litigation. Plaintiff and his counsel are also aware of the burdens of proof necessary to establish
20 liability, both generally and in response to Defendants’ defenses thereto, and the difficulties in
21 establishing Defendants’ liability for, and the right to recover, penalties on behalf of Plaintiff, the State
22 of California, and other Aggrieved Employees. Plaintiff and his counsel have also taken into account
23 Defendants’ agreement to enter into a settlement that confers significant relief upon the Aggrieved
24 Employees and the State of California. Considering all of the facts in this case, Plaintiff and his counsel
25 have determined that the Agreement represents a fair, adequate, and reasonable resolution of the
26 PAGA claims, and that it is in the best interests of the Aggrieved Employees and the State of
27 California.

28 ///

1 55. The result achieved in this case is well within the range of what is considered an
2 acceptable settlement under the circumstances, especially when compared to the settlement of PAGA
3 claims in other cases.

4 **The Agreement was Negotiated by Experienced Counsel**

5 56. In the view of PAGA Counsel, the benefits conferred by the Agreement are eminently
6 fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees
7 in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits
8 provided for by the Agreement.

9 57. Here, the extent of informal discovery conducted was sufficient to enable PAGA
10 Counsel to evaluate the strength and value of the PAGA claims for purposes of settlement. The
11 settlement negotiations were conducted by highly capable and experienced counsel. PAGA Counsel
12 are respected members of the bar with strong records of vigorous and effective advocacy, and are
13 experienced in handling complex wage and hour class action litigation. Accordingly, PAGA Counsel
14 had sufficient information and experience to act intelligently in negotiating the Agreement.

15 **The Requested Attorneys' Fees are Fair and Reasonable**

16 58. PAGA Counsel's application for attorneys' fees in light of the facts and circumstances
17 surrounding this matter is well-within the range of reasonableness. PAGA Counsel has vigorously
18 litigated this matter since it was commenced, with the very real possibility of an unsuccessful outcome
19 and no fee recovery of any kind.

20 59. In the present case, PAGA Counsel has borne all of the risks and costs of litigation and
21 will not receive any compensation until recovery is obtained. PAGA Counsel is experienced in
22 complex wage-and-hour litigation and used that experience to obtain a favorable result for Plaintiff,
23 the Aggrieved Employees, and the State of California. Considering the amount of fees requested,
24 work performed, risks incurred, and experience of PAGA Counsel in handling similar matters,
25 Plaintiff maintains that the requested attorneys' fees of thirty-five percent (35%) of the Gross
26 Settlement Amount (i.e., \$154,000.00) are reasonable and should be awarded.

27 ///

28 ///

1 60. The effectiveness of PAGA Counsel’s prosecution of this matter has translated into
2 tangible monetary benefits for the Aggrieved Employees as follows: (1) Aggrieved Employees will
3 obtain monetary recovery over a relatively short period of time, as opposed to waiting additional years
4 for the same, or potentially worse, result; (2) a guaranteed result that compares favorably with other
5 representative PAGA actions of this type, given the strengths and weaknesses of the case; and (3)
6 significant savings in PAGA Counsel’s fees and/or costs that would have only increased significantly
7 had the case progressed through trial and/or appeals.

8 61. PAGA Counsel is experienced in complex representative and class action wage-and-
9 hour litigation. Blackstone Law, APC (“Blackstone”) has been counsel of record on several class and
10 PAGA actions that have since been resolved, the most recent of which are attached hereto as **Exhibit**
11 **5**. The attorneys who worked on this matter are all experienced in litigating wage and hour matters as
12 follows:

13 a. Jonathan M. Genish is the founder of Blackstone. He received his law degree from
14 Benjamin N. Cardozo School of Law and was admitted to the California State Bar in 2008. During
15 law school, he clerked at the litigation firm Oved & Oved, LLP and was published several times in
16 various small publications. Upon graduation, he was rehired by Freedman & Taitelman, LLP as an
17 associate and remained employed there from September 2008 through August 2015. During his
18 tenure, he managed hundreds (perhaps thousands) of complex litigation cases, ranging from
19 employment, corporate, entertainment, and general business litigation matters, though his primary area
20 of expertise was employment, both single plaintiff and representative actions. On the vast majority of
21 those cases, he was the only or primary attorney managing the case and thus obtained extensive
22 experience. In that capacity, he conducted wage and hour and wrongful termination labor and
23 employment intakes; was the primary contact for all clients; took and defended hundreds (if not
24 thousands) of depositions; propounded and responded to all discovery; prepared and opposed all
25 motions and pleadings, including dispositive and certification motions; strategized on all cases;
26 attended all hearings; attended all mediations; coordinated with class action administrators; prepared
27 and worked with experts; first and second chaired multiple trials and arbitrations; and engaged in all
28 other intricate facets of litigation. During that time, he represented a wide range of clients from sole

1 proprietorships to Fortune 500 companies in state, federal, complex, and appellate courts. Many of
2 the cases he managed were highly publicized, with articles written about them in the Los Angeles
3 Times, Deadline, The Hollywood Reporter, Business Insider, Law360, and others. Super Lawyers has
4 regularly honored him as a Southern California Rising Star since 2012. He is currently the managing
5 partner of Blackstone overseeing roughly 500 labor and employment cases, approximately 80% of
6 which include a wage and hour component. The majority of those cases are wage-and-hour putative
7 class actions or representative PAGA actions seeking relief on behalf of thousands of California
8 employees. His billable rate is \$1,150, which is well within the prevailing rate for attorneys with his
9 experience in this area of practice in Southern California.

10 b. Miriam L. Schimmel is a 28-year litigator who joined Blackstone in June 2022,
11 following ten years of working with two well-known plaintiff-side wage and hour law firms in Los
12 Angeles. She obtained her Bachelor of Arts degree in Political Science from the University of
13 California at Los Angeles in 1992. Thereafter, she received her law degree from Loyola Law School
14 in 1996 and was admitted to the California State Bar in December 1996. Since her admission to the
15 Bar, she has devoted her practice to a wide variety of litigation matters on both the plaintiff and defense
16 side, including general business, toxic tort, medical device, and pharmaceutical matters. Since 2010,
17 her practice has been devoted almost entirely to employment litigation consisting of wage and hour
18 class actions and representative actions pursuant to PAGA, as well as individual actions based on
19 violations of the Fair Employment and Housing Act ("FEHA"). Approximately 75% of her work in
20 this regard has been on behalf of employees (plaintiffs), while the remaining 25% was on behalf of
21 employers/businesses. On many of those cases, she was the senior lead attorney managing the
22 litigation and overseeing other attorneys. In that capacity, she obtained extensive experience analyzing
23 potential wage and hour and wrongful termination claims for viability; took and defended hundreds of
24 depositions; propounded and responded to discovery; prepared and opposed a wide variety of motions
25 and pleadings, including dispositive and certification motions, as well as settlement approval motions;
26 strategized on all cases; participated in and directed communication with class members; attended
27 hearings; led and participated in mediations; coordinated with class action administrators; prepared
28 and worked with experts; and engaged in all other related aspects of litigation in state, federal,

1 complex, and appellate courts. Her billable rate is \$1,050, which is well within the prevailing rate for
2 attorneys with her experience in this area of practice in Southern California.

3 c. Joana Fang is a highly skilled eight-year lawyer who is part of the team at Blackstone
4 that litigated this matter. She is a 2015 graduate of Loyola Law School, and a 2011 graduate of
5 University of California, Berkeley where she was a double major in Legal Studies and Media Studies.
6 Since passing the Bar, Ms. Fang has exclusively represented plaintiffs in wage and hour litigation, as
7 well as catastrophic injury complex litigation. Her hourly rate of \$750 is reasonable based on her
8 education and experience and is in line with the market rate.

9 d. I joined Blackstone from a highly reputable employment law firm. I graduated from
10 the University of California, Los Angeles with a Bachelor of Arts degree in 2016 and from New
11 England Law | Boston with a Juris Doctor degree in 2019 and the State Bars of New York and New
12 Jersey in 2023. I have worked on many wage and hour class action and PAGA representative matters,
13 and my work has included, *inter alia*, researching and drafting pleadings, administrative notice
14 exhaustion, drafting, negotiating, and finalizing stipulations and settlement agreements, engaging in
15 motion practice, claims evaluation and analysis, and making court appearances. I was admitted to the
16 State Bar of California in December of 2019. My hourly rate of \$695 is reasonable based on my
17 education and experience and is in line with the market rate.

18 e. Jared C. Osborne joined Blackstone also from a highly reputable employment law firm.
19 He graduated from New York University with a Bachelor of Arts degree in 2009 and from University
20 of Southern California with a Juris Doctor degree in 2020. He was admitted to the State Bar of
21 California in February 2021. His hourly rate of \$650 is reasonable based on his education and
22 experience and is in line with the market rate. Shawn Bahmani joined Blackstone from a law firm
23 focused on a variety of practice areas of litigation. He graduated from San Diego State University
24 with a Bachelor of Sciences degree in 2014 and from Tulane University Law School with a Juris
25 Doctor degree in 2019. He was admitted to the State Bar of California in May 2022. His hourly rate
26 of \$650 is reasonable based on his education and experience and is in line with the market rate.

27 ///

28 ///

f. Alex Favela joined Blackstone from a highly reputable employment law firm. He graduated from John Hopkins University with a Bachelor of Arts degree in 2016 and from Stanford Law School with a Juris Doctor Degree in 2021. He was admitted to the State Bar of California in June 2022. His hourly rate of \$650 is reasonable based on his education and experience and is in line with the market rate.

62. Blackstone Law, APC has spent approximately 196.70 total hours litigating this matter. To date, our total fees incurred amount to \$167,204. Each attorney who worked on this matter engaged in a multitude of tasks, including communicating with the client and defense counsel; investigating the facts and researching applicable legal issues; drafting pleadings and the mediation brief; reviewing documents; preparing for and attending mediation; and facilitating the settlement by drafting the settlement documents and documents for obtaining settlement approval. A summary of Blackstone's lodestar for each attorney who worked on this matter is as follows:

<u>Attorney</u>	<u>Position</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Jonathan M. Genish	Managing Partner	16.70	\$1,150	\$19,205
Miriam L. Schimmel	Senior Counsel	65.70	\$1,050	\$68,985
Joana Fang	Senior Associate	29.10	\$750	\$21,825
Alexandra Rose	Senior Associate	40.20	\$695	\$27,939
Jared C. Osborne	Associate	26.40	\$650	\$17,160
Shawn Bahmani	Associate	15.60	\$650	\$10,140
Alex Favela	Associate	3	\$650	\$1,950

63. We expect to spend an additional 10 hours (\$10,500) in connection with finalizing the Motion, preparing for the approval hearing, and managing the Agreement through its conclusion, including anticipated communications with defense counsel, the Administrator, and our client. Based thereon, the total amount of PAGA Counsel's fees through closure of this matter are estimated to be approximately \$177,704.

///

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7

8

9
10
11
12
13
14
15
16
17
18

19

20
21
22
23

24

25

26

27

28

EXHIBIT 1



8383 Wilshire Blvd., Suite 745
Beverly Hills, CA 90211
Phone: (310) 622-4278
Fax: (855) 786-6356

Miriam Schimmel Esq.
mschimmel@blackstonepc.com

January 16, 2024

PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)

Sacramento, CA 95814

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: *Brandon Geston v. FRTO LLC; FRGM LLC; VWOC LLC*

To Whom It May Concern:

This office represents Brandon Geston (“Claimant”) with respect to their claims under the California Labor Code against FRTO LLC, FRGM, LLC, and VWOC LLC (collectively dba Blackstone Automotive Group, Blackstone Chevrolet, Blackstone Toyota, Blackstone Cadillac, Blackstone Collision Center, and Volkswagen of Clovis) (including all affiliates, subsidiaries, parents, directors, and officers) (collectively referred to herein as “Employers”). This letter is being sent simultaneously to Employers by certified mail.

Employers employed Brandon Geston from approximately November 2019 to December 2023 as a non-exempt, hourly-paid employee. Claimant worked as a Car Salesman for Employers and was based out of Employers’ facility located at 5735 N. Blackstone Avenue, Fresno, California 93710.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”). Claimant is seeking penalties on behalf of his or herself and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3 and shall serve as Claimant’s notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

As detailed below, Employers violated several of California’s wage and hour laws during Claimant’s employment, including but not limited to California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the

applicable Industrial Welfare Commission Wage Order (“IWC Wage Order”).

The claims made on behalf of Claimant and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR WORK PERFORMED AT CORRECT RATES OF PAY, INCLUDING COMMISSIONS, MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers engaged in numerous unlawful practices which resulted in the failure to pay Claimant and other Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

California Labor Code sections 1194, 1197, and 1197.1 and the applicable IWC Wage Order require employers to pay at least the legal minimum wage to their employees. California Labor Code sections 510 and 1198 and the applicable IWC Wage Order further require employers to pay no less than one and one-half times an employee’s regular rate of pay for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice an employee’s regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek.

Throughout the relevant time, Employers regularly required Claimant and other Aggrieved Employees to perform work off-the-clock including, among other things, (1) attending meetings prior to clocking in and (2) answering phone calls and text messages from customers in between shifts. Employers failed to compensate Claimant and other Aggrieved Employees for any of this off-the-clock work, in violation of California law.

This uncompensated work often resulted in the total number of hours worked by Claimant and other Aggrieved Employees exceeding the daily and/or weekly triggers for overtime wages, yet Employers failed to pay Claimant and Aggrieved Employees applicable overtime rate(s) for these hours.

Employers also failed to accurately record the actual time worked by Claimant and Aggrieved Employees.

Employers also failed to pay overtime to Claimant and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, including non-discretionary commissions, non-discretionary bonuses, and non-discretionary performance pay. Employers unlawfully diverted and/or deducted portions of Claimant and Aggrieved Employees’ earned commissions in violation of California Law.

As a result of the foregoing practices, Employers failed to pay Claimant and other Aggrieved Employees for all wages earned at the correct rates of pay, including commissions,

minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 204, 221, 510, 1194, 1197, 1197.1 and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. MEAL BREAK VIOLATIONS

California law requires employers to provide employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7 & 512(a). Employers must provide a second meal period of no less than thirty (30) minutes before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. *Id.* For each day that an employer fails to provide compliant meal period(s), the employer must pay the employee a meal penalty equal to one hour of pay at the employee's regular rate of compensation. *Id.*

During the relevant time period, Employers failed to provide Claimant and other Aggrieved Employees with legally compliant 30-minute meal periods. Claimant and other Aggrieved Employees were required by Employers to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Claimant and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Meal breaks, when provided, were oftentimes interrupted and/or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded their own purported meal period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during meal periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from

taking timely, uninterrupted, and duty-free meal periods because of the priority placed on maximizing profits over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for each day a compliant meal period was not provided to them in compliance with California law.

Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 226.7, 512(a) and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. REST BREAK VIOLATIONS

California law requires employers to authorize and permit employees to take an uninterrupted rest period of no less than ten (10) minutes for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. For each day that an employer fails to authorize and permit a compliant rest period, the employer owes the employee one hour of pay at the employee's regular rate of compensation. Cal. Lab. Code § 226.7(c).

Employers failed to authorize and permit Claimant and other Aggrieved Employees to take compliant 10-minute rest periods. Employers required Claimant and other Aggrieved Employees to work through rest periods. Claimant and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimant and other Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant

rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during rest periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for each day a rest period was not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 226.7 and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employers failed to timely pay all wages earned because Claimant and other Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, commissions, and meal and rest period premiums. Employers paid Claimant and Aggrieved Employees according to a non-complaint monthly schedule. Employers maintained a policy and practice of paying Claimant and Aggrieved Employees commissions only once a month. For these reasons, among others, Employers violated California Labor Code section 204.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

California Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1)

gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer.

As a result of the practices described above, the wage statements provided to Claimant and other Aggrieved Employees failed to include the actual hours worked (including time spent working off-the-clock), the actual gross wages earned (including wages owed for time spent working off the clock and meal and rest period premiums), and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. During the relevant time period, Employers have failed to maintain accurate records relating to Claimant and other Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 1198.5 and 1174(d).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. The applicable IWC Wage Order requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimant and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the necessary purchase of COVID-19 testing kits and work-related licenses.

Accordingly, Employers violated the applicable IWC Order and California Labor Code sections 2800 and 2802. Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; and attorneys' fees and costs.

8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION

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

During the relevant time period, upon the termination of employment (including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned), Employers failed to pay all wages due to their employees within twenty-four (24) hours of termination or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Claimant and Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Claimant and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Claimant and Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 203 and 1199; and attorneys' fees and costs.

9. EMPLOYER'S OTHER VIOLATIONS OF THE CALIFORNIA LABOR CODE

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 25 Cal.App.5th 745 ("*Huff*"), as an Aggrieved Employee, Claimant has standing, and intends to pursue civil penalties on behalf of the LWDA against Employers for any and all other Labor Code violations committed by Employers. In *Huff*, the California Court of Appeals held that an employee alleging a single violation of the Labor Code under PAGA may also bring PAGA claims against Employer for all other alleged Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Claimant, as an "aggrieved" employee affected by at least one Labor Code violation may, and hereby does, pursue penalties on behalf of LWDA for all Labor Code violations by Employer.

Employers are in direct violation of numerous California wage and hour laws including

but not limited to said sections stated above. Claimant hereby provides notice to the LWDA under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698, *et seq.*, and specifically asks for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that Claimant may allege a cause of action under PAGA against Employers for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, *et seq.*, by seeking redress in court. Cal. Lab. Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Cal. Lab. Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Cal. Lab. Code § 2699.3(a)(2)(A). It is Claimant's intention to file a civil complaint and to bring the appropriate claims under California Labor Code § 2699 on behalf of themselves, the State of California and all Aggrieved Employees should your office not address Employers' alleged violations within this timeframe.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW

Miriam Schimmel

Miriam Schimmel, Esq.

cc: By U.S. Certified Mail, Return Receipt Requested

FRGM LLC
Agent for Service, Mark Feldman
4490 Stevens Creek Boulevard
San Jose, CA 95129

FRGM LLC
P.O. Box 9099
San Jose, CA 95157-0099

EXHIBIT 2



8383 Wilshire Blvd., Suite 745
Beverly Hills, CA 90211
Phone: (310) 622-4278
Fax: (855) 786-6356

Jared Osborne, Esq.
josborne@blackstonepc.com

June 4, 2024

Amended PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)

Sacramento, CA 95814

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: *Brandon Geston v. FRTO LLC; FRGM LLC; CLVW LLC dba Volkswagen of Clovis*

Amended PAGA Letter: LWDA-CM-1005132-24

To Whom It May Concern:

This office represents Brandon Geston (“Claimant”) with respect to his claims under the California Labor Code against FRTO LLC, FRGM, LLC, and CLVW LLC dba Volkswagen of Clovis (collectively dba Blackstone Automotive Group, Blackstone Chevrolet, Blackstone Toyota, Blackstone Cadillac, Blackstone Collision Center, and Volkswagen of Clovis) (including all affiliates, subsidiaries, parents, directors, and officers) (collectively referred to herein as “Employers”). Claimant’s original notice for this claim No. LWDA-CM-1005132-24 incorrectly named VWOC LLC as one of his joint-employers. However, Claimant has discovered the true and correct name of VWOC LLC to be CLVW LLC dba Volkswagen of Clovis. Claimant hereby amends his notice to substitute CLVW LLC for VWOC LLC and confirm that the facts and allegations set forth herein apply to CLVW LLC in addition to FRTO LLC and FRGM, LLC. This letter is being sent simultaneously to the Employers through their counsel by certified mail.

Employers employed Brandon Geston from approximately November 2019 to December 2023 as a non-exempt, hourly-paid employee. Claimant worked as a Car Salesman for Employers and was based out of Employers’ facility located at 5735 N. Blackstone Avenue, Fresno, California 93710.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”). Claimant is seeking penalties on behalf of his or herself and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period (“Aggrieved Employees”). This letter is

being sent in compliance with California Labor Code section 2699.3 and shall serve as Claimant's notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

As detailed below, Employers violated several of California's wage and hour laws during Claimant's employment, including but not limited to California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the applicable Industrial Welfare Commission Wage Order ("IWC Wage Order").

The claims made on behalf of Claimant and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR WORK PERFORMED AT CORRECT RATES OF PAY, INCLUDING COMMISSIONS, MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers engaged in numerous unlawful practices which resulted in the failure to pay Claimant and other Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

California Labor Code sections 1194, 1197, and 1197.1 and the applicable IWC Wage Order require employers to pay at least the legal minimum wage to their employees. California Labor Code sections 510 and 1198 and the applicable IWC Wage Order further require employers to pay no less than one and one-half times an employee's regular rate of pay for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice an employee's regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek.

Throughout the relevant time, Employers regularly required Claimant and other Aggrieved Employees to perform work off-the-clock including, among other things, (1) attending meetings prior to clocking in and (2) answering phone calls and text messages from customers in between shifts. Employers failed to compensate Claimant and other Aggrieved Employees for any of this off-the-clock work, in violation of California law.

This uncompensated work often resulted in the total number of hours worked by Claimant and other Aggrieved Employees exceeding the daily and/or weekly triggers for overtime wages, yet Employers failed to pay Claimant and Aggrieved Employees applicable overtime rate(s) for these hours.

Employers also failed to accurately record the actual time worked by Claimant and Aggrieved Employees.

Employers also failed to pay overtime to Claimant and Aggrieved Employees for all

overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, including non-discretionary commissions, non-discretionary bonuses, and non-discretionary performance pay. Employers unlawfully diverted and/or deducted portions of Claimant and Aggrieved Employees' earned commissions in violation of California Law.

As a result of the foregoing practices, Employers failed to pay Claimant and other Aggrieved Employees for all wages earned at the correct rates of pay, including commissions, minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 204, 221, 510, 1194, 1197, 1197.1 and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. MEAL BREAK VIOLATIONS

California law requires employers to provide employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7 & 512(a). Employers must provide a second meal period of no less than thirty (30) minutes before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. *Id.* For each day that an employer fails to provide compliant meal period(s), the employer must pay the employee a meal penalty equal to one hour of pay at the employee's regular rate of compensation. *Id.*

During the relevant time period, Employers failed to provide Claimant and other Aggrieved Employees with legally compliant 30-minute meal periods. Claimant and other Aggrieved Employees were required by Employers to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Claimant and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Meal breaks, when provided, were oftentimes interrupted and/or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded their own purported meal period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved

Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during meal periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on maximizing profits over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for each day a compliant meal period was not provided to them in compliance with California law.

Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 226.7, 512(a) and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. REST BREAK VIOLATIONS

California law requires employers to authorize and permit employees to take an uninterrupted rest period of no less than ten (10) minutes for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. For each day that an employer fails to authorize and permit a compliant rest period, the employer owes the employee one hour of pay at the employee's regular rate of compensation. Cal. Lab. Code § 226.7(c).

Employers failed to authorize and permit Claimant and other Aggrieved Employees to take compliant 10-minute rest periods. Employers required Claimant and other Aggrieved Employees to work through rest periods. Claimant and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimant and other Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely and complete

rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during rest periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for each day a rest period was not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 226.7 and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employers failed to timely pay all wages earned because Claimant and other Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, commissions, and meal and rest period premiums. Employers paid Claimant and Aggrieved Employees according to a non-complaint monthly schedule. Employers maintained a policy and practice of paying Claimant and Aggrieved Employees commissions only once a month. For these reasons, among others, Employers violated California Labor Code section 204.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

California Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer.

As a result of the practices described above, the wage statements provided to Claimant and other Aggrieved Employees failed to include the actual hours worked (including time spent working off-the-clock), the actual gross wages earned (including wages owed for time spent working off the clock and meal and rest period premiums), and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. During the relevant time period, Employers have failed to maintain accurate records relating to Claimant and other Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 1198.5 and 1174(d).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

///
///
///

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. The applicable IWC Wage Order requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimant and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the necessary purchase of COVID-19 testing kits and work-related licenses.

Accordingly, Employers violated the applicable IWC Order **Error! Reference source not found.** and California Labor Code sections 2800 and 2802. Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; and attorneys' fees and costs.

8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION

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

During the relevant time period, upon the termination of employment (including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned), Employers failed to pay all wages due to their employees within twenty-four (24) hours of termination or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Claimant and Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Claimant and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Claimant and Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 203 and 1199; and attorneys' fees and costs.

///

9. EMPLOYER'S OTHER VIOLATIONS OF THE CALIFORNIA LABOR CODE

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 25 Cal.App.5th 745 (“*Huff*”), as an Aggrieved Employee, Claimant has standing, and intends to pursue civil penalties on behalf of the LWDA against Employers for any and all other Labor Code violations committed by Employers. In *Huff*, the California Court of Appeals held that an employee alleging a single violation of the Labor Code under PAGA may also bring PAGA claims against Employer for all other alleged Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Claimant, as an “aggrieved” employee affected by at least one Labor Code violation may, and hereby does, pursue penalties on behalf of LWDA for all Labor Code violations by Employer.

Employers are in direct violation of numerous California wage and hour laws including but not limited to said sections stated above. Claimant hereby provides notice to the LWDA under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698, *et seq.*, and specifically asks for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that Claimant may allege a cause of action under PAGA against Employers for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, *et seq.*, by seeking redress in court. Cal. Lab. Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Cal. Lab. Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Cal. Lab. Code § 2699.3(a)(2)(A). It is Claimant’s intention to file a civil complaint and to bring the appropriate claims under California Labor Code § 2699 on behalf of themselves, the State of California and all Aggrieved Employees should your office not address Employers’ alleged violations within this timeframe.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW

/s/ Jared Osborne

Jared Osborne, Esq.

///



BLACKSTONE
LAW

8383 Wilshire Blvd., Suite 745
Beverly Hills, CA 90211
Phone: (310) 622-4278
Fax: (855) 786-6356

cc: By U.S. Certified Mail, Return Receipt Requested (courtesy copy sent electronically)

Philip Ewen
Michael Goldstein
Citadelle Priagula
MUSICK, PEELER & GARRETT LLP
330 South Hope Street, Suite 2900
Los Angeles, CA 90071
Emails: P.Ewen@musickpeeler.com
M.Goldstein@musickpeeler.com
C.Priagula@musickpeeler.com
A.Shapar@musickpeeler.com

Attorneys for Defendants FRGM LLC, FRTO
LLC, and CLVW LLC

EXHIBIT 3

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff BRANDON GESTON (“Plaintiff”) and FRGM LLC, FRTO LLC, and CLVW LLC (collectively, “Defendants”). The Agreement refers to the Plaintiff and Defendants collectively as “Parties” and individually as “Party.” The Parties agree that the Agreement will be submitted to the Labor and Workforce Development Agency before or at the same time that it is submitted to the Court.

1 DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendants captioned *Brandon Geston v. FRTO LLC, et al.*, Fresno County Superior Court, Case No. 24CECG01292, filed on March 25, 2024.
- 1.2 “Administrator” means ILYM Group, Inc. or any other third-party class action settlement administrator agreed to by the Parties.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Agreement. The Administration Expenses Payment is estimated not to exceed \$6,000.00.
- 1.4 “Aggrieved Employee(s)” means all current and former hourly-paid and/or non-exempt employees who worked for Defendants in the State of California at any time during the PAGA Period.
- 1.5 “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendants’ possession including each Aggrieved Employee’s full name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6 “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods, and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7 “Approval Order” means the Court’s order granting approval of the Settlement.
- 1.8 “Court” means the Superior Court of California, County of Fresno.
- 1.9 “Defendants” means the named Defendants FRGM LLC, FRTO LLC, and CLVW LLC.
- 1.10 “Defense Counsel” means:

Phil Ewen (State Bar No. 128183)

p.ewen@musickpeeler.com
Michael R. Goldstein (State Bar No. 155349)
m.goldstein@musickpeeler.com
Citadelle B. Priagula (State Bar No. 272266)
c.priagula@musickpeeler.com
MUSICK, PEELER & GARRETT LLP
333 South Hope Street, Suite 2900
Los Angeles, California 90071-3048
Telephone (213) 629-7600
Facsimile (213) 624-1376

- 1.11 “Effective Date” means the date by when the Court enters the Judgment on its Approval Order.
- 1.12 “Gross Settlement Amount” means \$440,000.00 which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay the Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment.
- 1.13 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the Net Settlement Amount calculated according to the number of PAGA Pay Periods for each Aggrieved Employee during the PAGA Period.
- 1.14 “Judgment” means the judgment entered by the Court based upon the Approval Order.
- 1.15 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.16 “LWDA PAGA Payment” means the 75% portion of the Net Settlement Amount paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.17 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid as the LWDA PAGA Payment and to the Aggrieved Employees as Individual PAGA Payments.
- 1.18 “PAGA Counsel” means the attorneys representing the Plaintiff in the Action:

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
Miriam L. Schimmel (State Bar No. 185089)
mschimmelblackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)

arose@blackstonepc.com
Jared C. Osborne (State Bar No. 335968)
josborne@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

- 1.19 “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.20 “PAGA Pay Period” means any pay period during which an Aggrieved Employee worked for Defendants during the PAGA Period.
- 1.21 “PAGA Period” means the period from January 16, 2023 through January 3, 2025.
- 1.22 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.23 “PAGA Notice” means Plaintiff’s January 16, 2024 letter, and as amended on June 4, 2024, to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.24 “Plaintiff” means Brandon Geston, the named plaintiff in the Action.
- 1.25 “Released PAGA Claims” means the claims being released by Plaintiff and Aggrieved Employees and as described in Paragraph 5 below.
- 1.26 “Released Parties” means Defendants and their respective past and present parents, subsidiaries, affiliates, associates, owners, divisions, related companies, business concerns, agents, and attorneys, and each of them, and their respective past and present successors and predecessors in interest, and all of their respective past and present officers, directors, employees, shareholders, owners, members, administrators, fiduciaries, trustees, beneficiaries, agents, attorneys, principals, heirs, assigns, representatives, accountants, auditors, consultants, insurers, and reinsurers.
- 1.27 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

2 RECITALS.

- 2.1 On March 25, 2024, Plaintiff commenced the Action by filing a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 *et seq.* (“Operative Complaint”), alleging a single cause of action against Defendants under PAGA.

- 2.2 Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint, deny any and all liability for the causes of action alleged, and deny the existence of any aggrieved employees.
- 2.3 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.
- 2.4 After discovery was exchanged and informally responded to by the Parties for purposes of mediation, the Parties attended a full-day mediation on December 4, 2024, before Tagore Subramaniam, Esq. The settlement was negotiated in light of all known facts and circumstances and the uncertainty associated with litigation, including the risk of Plaintiff not being able to maintain representative claims, the difficulty of proving Plaintiff's PAGA claims in a manageable trial, the merits of Defendants' potential defenses, and the significant delay and potential appellate issues inherent to litigation.
- 2.5 Other than Plaintiff's separately filed class action, Fresno Superior Court Case No. 24CECG00875 and the action entitled *Cornelius Agina v. CLVW LLC, et al.*, Fresno Superior Court, Case No. 24CECG03422, the Parties, PAGA Counsel, and Defense Counsel represent that they are not aware of another pending matter or action asserting claims that would be extinguished or affected by the Settlement.

3 **MONETARY TERMS.**

- 3.1 **Gross Settlement Amount.** Except as otherwise provided by Paragraph 8 below, Defendants promise to pay \$440,000.00 and no more as the Gross Settlement Amount. Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.2 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.
- 3.2 **Payments from the Gross Settlement Amount.** The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Approval Order:
 - 3.2.1 **To PAGA Counsel:** A PAGA Counsel Fees Payment of not more than 35% of the Gross Settlement Amount, which is currently estimated to be \$154,000.00, and a PAGA Counsel Litigation Expenses Payment of not more than \$25,000.00. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts

requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's counsel arising from any claim to any portion of the PAGA Counsel Fees Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these payments.

3.2.2 To the Administrator: An Administration Expenses Payment not to exceed \$6,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administrator's expenses are less or the Court approves payment less than \$6,000.00, the Administrator will allocate the remainder to the Net Settlement Amount.

3.2.3 To the LWDA and Aggrieved Employees: 75% of the Net Settlement Amount will be allocated to the LWDA PAGA Payment and 25% of the Net Settlement Amount will be allocated to the Individual PAGA Payments.

3.2.3.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of the Net Settlement Amount by the total number of PAGA Pay Periods for all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each individual Aggrieved Employee's PAGA Pay Periods. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms, if applicable.

4 SETTLEMENT DEADLINES.

4.1 Aggrieved Employee Data. Within or by fifteen (15) days of the Effective Date, Defendants will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Agreement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably

feasible. Without any extension of the deadline by which Defendants must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data. No identifying information or contact information is to be forwarded to PAGA Counsel for any Aggrieved Employee.

4.2 Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 15 days after the Effective Date.

4.3 Payments from the Gross Settlement Amount. Within 15 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.3.1 The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database. The Administrator will include with each Individual PAGA Payment check a notice ("Notice"), a copy of which will first be submitted to the Court for approval along with the motion and/or application for approval of the Settlement, informing the recipient of the scope of the Released PAGA Claims, and as to the recipient's responsibility, for any taxes payable on the amount received. The Notice, shall be substantially in the form attached as **Exhibit A** to this Agreement.

4.3.2 The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.3.3 For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and canceled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Division in the name of the Aggrieved Employee.

4.3.4 The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5 **RELEASE OF CLAIMS.** Upon the Effective Date and full funding of the Gross Settlement Amount, the Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, for claims for Defendants' alleged failure to pay minimum, earned, and overtime wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide complaint wage statements, keep requisite payroll records, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order.

6 **MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties agree to jointly prepare and for Plaintiff to file an application or motion and proposed order for approval of the Settlement.

6.1 **Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of the Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Approval Order; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel, or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), and this Agreement (Labor Code section 2699, subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.2 **Responsibilities of PAGA Counsel.** PAGA Counsel is responsible for expeditiously finalizing and filing the application or motion for approval of the Settlement after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. Defense Counsel are provided the opportunity to review and propose any reasonable changes to the application or motion for approval of the settlement. PAGA Counsel is responsible for delivering the Court's Approval Order to the Administrator.
- 6.3 **Duty to Cooperate.** If the Parties disagree on any aspect of the proposed application or motion for approval of the Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of the Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7 SETTLEMENT ADMINISTRATION.

- 7.1 **Selection of Administrator.** The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for the Administration Expenses Payment. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 **Employer Identification Number.** The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 **Qualified Settlement Fund.** The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 **Administrator Duties.** The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8 ESCALATOR CLAUSE. Based on its records, Defendants estimates that, for settlement purposes, (1) there are 529 Aggrieved Employees who worked approximately 10,091 pay periods during the period January 16, 2023 to December 4, 2024. If the actual number of PAGA Pay Periods worked by the Aggrieved Employees during the PAGA Period is more than ten percent (10%) above 10,091, then the Gross Settlement Amount will be increased on a *pro rata* basis equal

to the percentage increase in the number of PAGA Pay Periods worked by the Aggrieved Employees above 10%.

- 9 **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, pursuant to California Code of Civil Procedure § 664.6, after entry of the Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

- 9.1 **Waiver of Right to Appeal.** Provided the Approval Order and/or Judgment is consistent with the terms and conditions of this Agreement or any executed addendum thereto, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-Judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If another Party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10 **ADDITIONAL PROVISIONS.**

- 10.1 **No Admission of Liability or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that representative treatment is for purposes of the Settlement only. If, for any reason the Court does not approve the Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendants' defenses. The Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 10.2 **Integrated Agreement.** Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3 **Attorney Authorization.** PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents

reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

- 10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Agreement, submitting supplemental evidence, and supplementing points and authorities as requested by the Court. Aside from the Gross Settlement Amount, in the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will continue to meet and confer to see if an agreement can be reached and/or will seek the assistance of the mediator for resolution.
- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Parties in the Settlement.
- 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendants, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in the Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 101, as amended) or otherwise.
- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Aggrieved Employee Data provided to PAGA Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to the Settlement, and no other

purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendants unless, prior to the Administrator's payment of all Settlement funds, Defendants make a written request to PAGA Counsel for the return, rather than the destruction, of Aggrieved Employee Data.

- 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15 Notice. All notices, demands, or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
Miriam L. Schimmel (State Bar No. 185089)
mschimmelblackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
Jared C. Osborne (State Bar No. 335968)
josborne@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

To Defendants:

Phil Ewen (State Bar No. 128183)
p.ewen@musickpeeler.com
Michael R. Goldstein (State Bar No. 155349)
m.goldstein@musickpeeler.com
Citadelle B. Priagula (State Bar No. 272266)
c.priagula@musickpeeler.com

MUSICK, PEELER & GARRETT LLP

333 South Hope Street, Suite 2900
Los Angeles, California 90071-3048
Telephone (213) 629-7600
Facsimile (213) 624-1376

- 10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement, the litigation shall be stayed (including with respect to CCP section 583.330), except to effectuate the terms of this Agreement.

IT IS SO AGREED.

PLAINTIFF BRANDON GESTON

Dated: 03/28/2025

Brandon Geston
Plaintiff Brandon Geston

DEFENDANT FRTO LLC

Dated: 4/4/25

[Signature]
Full Name: MARK Feldman
Title: CFO
On behalf of Defendant FRTO LLC

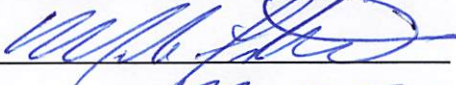
DEFENDANT FRGM LLC

Dated: 4/4/25

[Signature]
Full Name: MARK Feldman
Title: CFO
On behalf of Defendant FRGM LLC

Dated: 4/4/25

DEFENDANT CLVW LLC



Full Name: Mark Feldman

Title: CFO
On behalf of Defendant CLVW LLC

EXHIBIT A

To: <<First Name>><<Last Name>>
<<Street Address>>
<<City>><<State>><<Zip>>

Re: Settlement Payment from *Brandon Geston v. FRTO LLC, et al.*, Fresno County
Superior Court Case No. 24CECG01292

Dear <<First Name>><<Last Name>>:

Please find enclosed a check in the amount of <<amount of payment>> ("Individual PAGA Payment"). This check is your payment from the settlement in the lawsuit entitled *Brandon Geston v. FRTO LLC, et al.*, Fresno County Superior Court Case No. 24CECG01292 ("Action").

The lawsuit was filed on March 25, 2024 by Brandon Geston ("Plaintiff") against FRTO LLC, FRGM LLC, and CLVW LLC (collectively, "Defendants"), on behalf of the State of California, with respect to himself and other alleged aggrieved employees, to seek recovery of civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA"), for multiple alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders, including, *inter alia*, for failure to properly pay minimum and overtime wages, failure to pay earned wages, failure to provide compliant meal and rest periods and associated premiums, failure to pay wages during employment and upon termination, failure to provide compliant wage statements, failure to keep requisite payroll records, and failure to reimburse business expenses. Prior to initiating the lawsuit, on January 16, 2024, Plaintiff submitted a letter to the California Labor and Workforce Development Agency ("LWDA"), pursuant to PAGA, to provide notice of his intent to seek civil penalties under PAGA for Defendants' alleged violations of California Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Orders, thereby initiating LWDA Case Number LWDA-CM-1005132-24; and submitted an amended letter on June 4, 2024 (together, the "PAGA Notice").

Defendants deny all of Plaintiff's allegations and deny any wrongdoing of any kind associated with Plaintiff's allegations. A settlement was reached between Plaintiff and Defendants.

On <<Date>>, the settlement was approved by the Court, with a portion to be paid to the LWDA and a portion to be paid to all current and former hourly-paid and/or non-exempt employees who worked for Defendants in the State of California at any time during the PAGA Period ("Aggrieved Employees"). The period January 16, 2023 to January 3, 2025 is the "PAGA Period."

You are receiving a portion of the settlement (the enclosed Individual PAGA Payment) because you have been identified as an Aggrieved Employee. Your Individual PAGA Payment is based on the total number of pay periods that you worked for Defendants in California during the PAGA Period. The Individual PAGA Payment will be reported on an IRS Form 1099 (if applicable). You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement and should consult a tax advisor regarding the tax consequences of such payment.

Under the settlement, as of << Effective Date and full funding of the Gross Settlement Amount >>, the Released Parties were fully, finally, and forever released, settled, compromised, relinquished, and discharged from the Released Claims.

"Released Parties" means Defendants and their respective past and present parents, subsidiaries, affiliates, associates, owners, divisions, related companies, business concerns, agents, and attorneys, and each of them, and their respective past and present successors and predecessors in interest, and all of their respective past and present officers, directors, employees, shareholders, owners, members, administrators, fiduciaries,

trustees, beneficiaries, agents, attorneys, principals, heirs, assigns, representatives, accountants, auditors, consultants, insurers, and reinsurers.

“Released PAGA Claims” means all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, for claims for Defendants’ alleged failure to pay minimum, earned, and overtime wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide complaint wage statements, keep requisite payroll records, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order.

The enclosed check is valid for 180 calendar days from the original date of issuance and mailing, and if it is not cashed, deposited, or otherwise negotiated within the 180-day timeframe, it will be canceled, and the funds associated with the canceled check will be transmitted to the State Controller’s Office Unclaimed Property Division in your name and in the amount of your Individual PAGA Payment.

Do not call or write the Court, Office of the Clerk of the Court, Defendants, or Defendants’ counsel to ask questions about the settlement or to ask tax-related questions. If you have any such questions, you may contact [Settlement Administrator] at [toll-free phone number].

EXHIBIT 4

Tuesday, April 8, 2025 at 17:11:01 Pacific Daylight Time

Subject: Thank you for your Proposed Settlement Submission
Date: Tuesday, April 8, 2025 at 5:07:27 PM Pacific Daylight Time
From: DIR PAGA Unit
To: Crystal Malizon

[External Email].

04/08/2025 05:07:09 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 5

- *Ly Hai v. Sunroad HS Auto, Inc.*, San Diego County Superior Court, Case No. 37-2022-00025788-CU-OE-CTL, approved as counsel, in association with other counsel, in settlement of representative wage and hour action pursuant to PAGA
- *Jose Luis Galicia v. Virco, Inc., et al.*, Los Angeles County Superior Court, Case No. 23STCV29425, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Rene Umana v. Columbus Technologies*, Los Angeles County Superior Court, Case No. 22STCV16432, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Fernando Solis v. Tuff Shed, Inc.*, Los Angeles County Superior Court, Case No. 24VECV00368, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Tyler Emery v. Santa Cruz Bicycles, LLC*, Santa Cruz Superior Court, Case No. 24CV00244, approved as counsel in final settlement of wage and hour class and PAGA action.
- *Vanessa Cortes v. Giti Tire (USA) LTD*, San Bernardino County Superior Court, Case No. CIVSB2332578, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Travis Sanford v. Santa Cruz Seaside Company*, Santa Cruz County Superior Court, Case No. 23CV01762, approved as counsel in final settlement of wage and hour class and PAGA action.
- *Corina Martinez v. Stagnaro Bros. Seafood, Inc.*, Santa Cruz County Superior Court, Case No. 24CV00082, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Alejandra Jimenez v. ClearFreight, Inc.*, Los Angeles County Superior Court, Case No. 23STCV28938, approved as counsel, in association with other counsel, in settlement of representative wage and hour action pursuant to PAGA.

- *Jazzmin Cortez v. Millard Mall Services, Inc.*, Riverside County Superior Court, Case No. CVRI2104010, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Michael Bravo v. Michels Pacific Energy, Inc.*, Santa Clara County Superior Court, Case No. 22CV403427, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Daniel Rodriguez v. Republique, LLC*, Los Angeles County Superior Court, Case No. 23STCV14521, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Theresa Bendorf, et al. v. Sea World LLC, et al.*, San Diego County Superior Court, Case No. 37-2021-00034922-CU-OE-CTL, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Victor De La Cruz v. Northwest Pipe Company*, San Bernardino County Superior Court, Case No. CIVSB2211140, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Bobby Birdi v. Lucid USA, Inc.*, Alameda County Superior Court, Case No. 21CV003541, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Jose Trujillo, et al. v. Producers Dairy Foods, Inc.*, Sacramento County Superior Court, Case No. 34-2022-00313753, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *David Williams v. Rancho Nicasio, LLC*, Marin County Superior Court, Case No. CIV2203067, approved as class counsel in final settlement of wage and hour class and PAGA action.

///

///

- *Alexander Jackson v. Lifecare Assurance Company*, Los Angeles County Superior Court, Case No. 23STCV26579, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Alexis Cardoza v. BHFC Operating LLC*, Los Angeles County Superior Court, Case No. 21STCV34040, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Maria Ayala, et al. v. SDH Services West, LLC*, Kern County Superior Court, Case No. BCV-21-101933, approved as class counsel in final settlement of wage and hour class action.
- *Alfredo Sanchez v. Greenworld, Inc.*, Riverside County Superior Court, Case No. CVRI2105756, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Oscar Bryant v. Midwest Construction Services, Inc. dba Trillium*, San Bernardino County Superior Court, Case No. CIVSB2121529, approved as class counsel in final settlement of wage and hour class action.
- *Matthew Savattieri v. AMI Expeditionary Healthcare, LLC, et al.*, Los Angeles County Superior Court, Case No. 21STCV33372, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Lexy Barajas, et al. v. H. W. Hunter, Inc.*, Los Angeles County Superior Court, Case No. 22STCV01892, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Alejandro Valdez v. C.H.I. Automart, Inc.*, Los Angeles County Superior Court, Case No. 21STCV40168, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Sheizan Bawa v. Meathead Movers, Inc.*, Orange County Superior Court, Case No. 30-2021-01211895-CU-OE-CXC, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.

- *Tanisha Lopez, et al. v. Restorix Health, Inc.*, Los Angeles County Superior Court, Case No. 21STCV33067, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Perla Soto, et al. v. Nippon Express U.S.A., Inc.*, Los Angeles County Superior Court, Case No. 21STCV24902, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Angel Garcia, et al. v. J&B Investments, Inc., et al.*, San Bernardino County Superior Court, Case No. CIVSB2208601, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Sindy Aviles, et al. v. Freeway Insurance Services America, LLC*, Los Angeles County Superior Court, Case No. 21STCV34864, approved as counsel, in association with other counsel, in settlement of representative wage and hour action pursuant to PAGA.
- *Alexander Gnaedig, et al. v. Favorite Healthcare Staffing, Inc.*, Los Angeles County Superior Court, Case No. 21STCV20904, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Richard Evans v. My Paint Stop, LLC, et al.*, Contra Costa County Superior Court, Case No. MSC21-01812, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Jose Luis Parada George v. Main Electric Supply Company, LLC, et al.*, Orange County Superior Court, Case No. 30-2021-01220136-CU-OE-CXC, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Samia Salazar Yunis v. Sharif Jewelers*, Sacramento County Superior Court, Case No. 34-2020-00290080, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Daniel Analco v. Felix Chevrolet, LP, et al.*, Los Angeles County Superior Court, Case No. 21STCV36654, approved as class counsel in final settlement of wage and

hour class and PAGA action.

- *Sasha Aiono v. Benefit Cosmetics*, Los Angeles County Superior Court, Case No. 21STCV33719, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.

EXHIBIT 6

Date	Type of Expense	Description of Expense	Amount
		<i>Geston v. FRTTO LLC, et al.</i>	
1/4/2024	Mailing	Records Request to FRGM LLC dba Blackstone Chevrolet (PO Box)	\$8.53
1/4/2024	Mailing	Records Request to FRGM LLC dba Blackstone Chevrolet	\$8.53
1/4/2024	Mailing	Records Request to FRGM LLC dba Blackstone Chevrolet (Agent)	\$8.53
1/16/2024	Mailing	LWDA: PAGA Letter	\$75.00
1/16/2024	Mailing	PAGA Letter to FRGM LLC dba Blackstone Chevrolet	\$8.53
1/16/2024	Mailing	PAGA Letter to FRGM LLC dba Blackstone Chevrolet (Agent)	\$8.53
2/27/2024	Filing	Steno: Class Action Complaint & Initiating Documents	\$1,997.20
3/25/2024	Filing	Steno: PAGA Complaint and Initiating Documents	\$687.20
4/12/2024	Filing	Steno: Notice and Acknowledgment of Receipt (FRGM LLC and FRTTO LLC)	\$59.95
5/8/2024	Filing	Steno: Doe Amendment (CLVW LLC)	\$59.95
5/22/2024	Filing	Steno: Notice and Acknowledgment of Receipt (CLVW LLC)	\$59.95
5/23/2024	Filing	Steno: Notice and Acknowledgment of Receipt (FRGM LLC and FRTTO LLC)	\$59.95
6/4/2024	Mailing	Amended PAGA Letter to Musick, Peeler, & Garrett LLP	\$5.04
6/11/2024	Filing	Steno: Case Management Statement	\$59.95
6/11/2024	Filing	Steno: Doe Amendment (CLVW LLC)	\$59.95
6/13/2024	Filing	Steno: Notice of Remote Appearance & Order Re: Remote Appearance	\$59.95
6/20/2024	Filing	Steno: Joint Stipulation to Continue CMC; [Proposed] Order	\$126.95
6/25/2024	Filing	Steno: Notice and Acknowledgment of Receipt (CLVW LLC)	\$59.95
7/3/2024	Filing	Steno: Request for Dismissal of VWOC LLC	\$59.95
7/8/2024	Filing	Steno: Case Management Statement	\$59.95
7/10/2024	Mediation	Momentum ADR	\$8,500.00
7/10/2024	Mailing	Payment to Momentum ADR	\$5.04
9/3/2024	Filing	Steno: Request for Dismissal of VWOC LLC	\$59.95
9/6/2024	Filing	Steno: Plaintiff's Opposition to MTC Arb	\$99.95
9/9/2024	Filing	Steno: Joint Stipulation to Continue MTC Arbitration Hearing; [Proposed] Order	\$86.95
9/9/2024	Service	Steno: Courtesy Copy of Joint Stipulation to Continue MTC Arbitration Hearing; [Proposed] Order to Dept. 503	\$99.00
12/9/2024	Filing	Steno: Case Management Statement	\$59.95
12/26/2024	Filing	Steno: Joint Stipulation & [Proposed] Order to Continue CMC	\$126.95
1/14/2025	Other	Berger Consulting Group	\$6,570.00
2/11/2025	Filing	Steno: Notice of Settlement	\$59.95
3/18/2025	Filing	Steno: Notice of Assignment of Judge for All Purposes	\$59.95
4/19/2025	Filing	Estimated Cost - Steno: Case Management Statement	\$59.95
4/19/2025	Filing	Estimated Cost - Steno: Case Management Statement	\$59.95
	Filing	Estimated Cost - Steno: Motion for PAGA Approval and Supporting Documents	\$140.95
	Filing	Estimated Cost - Steno: Notice of Entry of Judgment or Order	\$59.95
		TOTAL:	\$19,582.03