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Attorneys for Plaintiff, JAIME ZAMORA FIDEL,
on behalf of himself and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JAIME ZAMORA FIDEL, as an individual,
and on behalf of all other aggrieved employees
under the Labor Code Private Attorneys'
General Act of 2004,

Plaintiff,

v.

DICK BROWNING, INC., a California
corporation; CERRITOS DODGE, INC.,
a California corporation; VICTORVILLE
NISSAN, INC., a California corporation;
HIGH DESERT AUTOS, I NC., a
California corporation; DAV, INC., a
California corporation; VAHI, INC., a
California corporation; AUTO SQUARE
AUTOS, INC., a California corporation;
TRIANGLE MOTORS, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 24STCV11259

[Assigned for All Purposes to the Hon.
Maurice A. Leiter in Dept. 54]

**DECLARATION OF VEDANG J. PATEL
IN SUPPORT OF PLAINTIFFS' MOTION
FOR APPROVAL OF
REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

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1 \$10,000.00 to each Plaintiff. Of the remaining sum (hereinafter, the “Net Settlement Amount),
2 and pursuant to the PAGA statute, seventy-five percent (75%) shall be paid to the California Labor
3 and Workforce Development Agency (“LWDA”) and twenty-five percent (25%) of which will be
4 paid to PAGA Members.

5 6. The Settlement is based on Defendants’ representation that there are 40,000 pay
6 periods worked during the PAGA Period. In the event the number of pay periods worked by PAGA
7 Members during the PAGA Period exceeds 44,000 (i.e. an increase greater than 10% of the 40,000
8 estimated pay periods), Defendants may elect to either: (1) shorten the PAGA Period to a time frame
9 where the number of pay periods does not exceed 44,000 pay periods, or (2) increase the Maximum
10 Settlement Amount by multiplying the pay periods in excess of 44,000 by the Pro Rata Amount.
11 The Pro Rata Amount shall be calculated by dividing the \$640,000.00 by 40,000, which amounts to
12 \$16.00. Thus, for example, should there be 50,000 pay periods in the PAGA Period, then the
13 Maximum Settlement Amount shall be increased by \$96,000.00 ((50,000 pay periods – 44,000 pay
14 periods) x \$16.00 per Pay Period.) If Plaintiff fail to comply with the timelines set out in paragraphs
15 47 and 48(a) of the Agreement, the escalator clause shall be tolled and any whole or partial pay
16 periods falling within the tolling period will not be considered for determining whether the 10%
17 threshold has been exceeded.

18 7. Plaintiff’s Counsel, comprised of David D. Bibiyan and Vedang Patel of Bibiyan
19 Law Group, P.C., among others, believe these penalties are genuine and meaningful and fulfill
20 PAGA’s underlying purpose to benefit the public. Accordingly, Plaintiff’s Counsel request that the
21 Court approve the Settlement as such awards are reasonable and also warrant approval.

22 **Factual and Procedural Background**

23 **The Parties**

24 8. I understand Plaintiff Fidel was a non-exempt hourly employee hired by Defendants
25 from approximately November of 2022 through the present. Plaintiff Fidel was a Mechanic, with
26 duties that included, but were not limited to, working on vehicles that have been in a collision and
27 need repair, disassembling vehicles, welding and cutting body of vehicles, and other duties.

9. Based on information provided by Defendants' counsel, Plaintiffs believe there are approximately 1,050 PAGA Members in the Settlement Period.

Procedural History

10. On or about October 11, 2022, Plaintiff Vargas filed with the LWDA and served on Defendant Auto Square Autos, Inc. a notice under Labor Code section 2699.3 stating Plaintiff Vargas intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations ("Vargas PAGA Notice").

11. On or about December 22, 2022, Plaintiff Vargas filed a PAGA action in the Superior Court of Los Angeles, Case No. 22NWCv01696 against Defendant Auto Square Autos, Inc., for violations of the Labor Code as alleged in his PAGA Notice ("Vargas PAGA Action").

12. On or about February 23, 2024, Plaintiff Fidel filed with the LWDA and served on Defendants Dick Browning, Inc., Cerritos Dodge, Inc., Victorville Nissan, Inc., High Desert Autos, Inc., Dav, Inc., Vahi, Inc., Auto Square Autos, Inc., and Triangle Motors, Inc., a notice under Labor Code section 2699.3 stating Plaintiff Fidel intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations ("Fidel PAGA Notice"). A true and correct copy of the Fidel PAGA Notice is attached as Exhibit "2" hereto.

13. On or about February 26, 2024, Plaintiff Fidel filed a wage and hour class action lawsuit against Defendants Dick Browning, Inc., Cerritos Dodge, Inc., Victorville Nissan, Inc., High Desert Autos, Inc., Dav, Inc., Vahi, Inc., Auto Square Autos, Inc., and Triangle Motors, Inc. in the Superior Court of Los Angeles, Case No. 24STCV04920, alleging: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) failure to indemnify; (9) failure to pay interest on deposits; (10) violation of labor code section 227.3; and (11) unfair competition (the "Class Action").

14. On or about May 6, 2024, Plaintiff Fidel filed a PAGA complaint in the Superior Court of California for the County of Los Angeles, on behalf of himself and all other aggrieved employees for the alleged violations in the PAGA Notice ("Fidel PAGA Action"). The Fidel PAGA Action complaint names as defendants Dick Browning, Inc., Cerritos Dodge, Inc., Victorville

1 Nissan, Inc., High Desert Autos, Inc., Dav, Inc., Vahi, Inc., Auto Square Autos, Inc., and Triangle
2 Motors, Inc. Plaintiff Fidel and Defendants agrees to further amend the PAGA Complaint, to add
3 and/or consolidate all of the claims and entities negotiated as part of the mediation (i.e., all
4 Defendants), as well as to add Plaintiff Vargas as a named plaintiff. The amended complaint is the
5 "Operative Complaint" and has since been filed.

6 15. On or about June 25, 2024, the Class Action was dismissed. On October 17, 2024,
7 the Parties participated in an all-day mediation on a PAGA-only basis presided over by Lynn Frank,
8 which led to the present settlement of this case on a PAGA basis only.

9 16. Prior to mediation, Plaintiff obtained, through informal discovery: (1) time and pay
10 records for approximately 80% of Aggrieved Employees for the period from February 23, 2023
11 through June 15, 2024; (2) data points, including the number of Aggrieved Employees, the number
12 of Aggrieved Employees separated from employment during the waiting time penalty period, the
13 average hourly rate, and the number of Pay Periods and shifts during the period from February 23,
14 2023 through June 15, 2024; (3) all relevant policy documents of Defendants; and (4) Plaintiffs'
15 personnel files.

16 17. I represent that I am not aware of any other pending matter or action asserting claims
17 that will be extinguished or affected by the Settlement.

18 **Discovery and Investigation**

19 18. In the leadup to mediation, Plaintiffs' Counsel investigated Plaintiffs' claims,
20 performed legal research regarding Defendants' defenses, and engaged in informal discovery.

21 19. "Plaintiff's Counsel," also referred to herein as "PAGA Counsel," means David D.
22 Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C., Shani O. Zakay and Tesla Stone of Zakay
23 Law Group, APC.; Jean-Cluade Lapuyade of JCL Law Firm, APC; and Kenneth Seligson and Ross
24 Tizes for Seligson Law P.C.

25 20. I believe the above information and sampling yielded sufficient information to
26 determine, for the PAGA Period, the total number of Aggrieved Employees, the total number of
27 shifts and PAGA pay periods, the average length of shifts for Aggrieved Employees, average rates
28 of pay, detailed analyses of meal period and rest period violations, the number of Aggrieved

1 Employees eligible for waiting time penalties and wage statement penalties, and the policies and
2 practices in play during the PAGA Period. The documents and information produced enabled
3 Plaintiffs' Counsel to analyze the law and facts relating to Plaintiffs' claims. Plaintiffs' Counsel
4 also retained an expert to review and analyze the time and payroll records and prepare a model
5 setting forth Defendants' potential exposure for civil penalties for use in mediation. The documents
6 and information shared also enabled Plaintiffs to evaluate the potential hurdles to recovery,
7 including in connection with the merits of the claims and manageability. Based on this investigation
8 and discovery, Plaintiffs were able to act intelligently and effectively in negotiating the proposed
9 Settlement.

10 21. PAGA Counsel have conducted significant investigation of the law and facts relating
11 to the claims asserted in the Action, and have concluded that the Settlement set forth herein is fair,
12 reasonable, adequate and in the best interests of the Aggrieved Employees, and, to the extent
13 permitted by law, the State of California, taking into account the sharply contested issues involved,
14 the expense and time necessary to litigate the Action through trial and any appeals, the risks and
15 costs of further litigation, the risk of an adverse outcome, the uncertainties of complex litigation, the
16 information learned through informal discovery regarding Plaintiffs' allegations, and the substantial
17 benefits to be received by Aggrieved Employees.

18 22. Defendants deny each of the allegations and claims asserted against them in the
19 Action. However, Defendants agreed to settle the Action for the purpose of avoiding the burden,
20 expense, and uncertainty of continuing litigation.

21 **Mediation**

22 23. On October 17, 2024, the Parties participated in an all-day mediation presided over
23 by mediator Lynn Frank, Esquire. The Parties did not reach a settlement at mediation. However,
24 settlement discussions continued following the mediation with the assistance of the mediator and
25 the Parties reached a settlement of the claims in the Action.

26 24. The settlement negotiations were at arm's length and, although conducted in a
27 professional manner, were adversarial. The Parties went into mediation willing to explore the
28 potential for a settlement of the Action, but each side was also prepared to litigate their position

1 through trial and appeal if a settlement had not been reached. After several exchanges of draft
2 settlement agreements, the Parties fully executed the Settlement Agreement, a copy of which is
3 attached hereto as Exhibit “1.”

4 25. Based on Plaintiffs’ investigation, informal discovery, and evaluation of Plaintiffs’
5 claims, Defendants’ defenses regarding the merits of the claims and the manageability of a trial
6 thereon, Defendants’ potential exposure, the expense and time necessary to pursue this action
7 through trial, the risks and costs of further prosecution of this action, the uncertainties of complex
8 litigation and developing law, and the benefits that will accrue to the LWDA and the Aggrieved
9 Employees, the Parties and their counsel believe that a settlement on the terms set forth herein is
10 fair, reasonable, adequate, and in the best interests of Plaintiffs, Aggrieved Employees, the LWDA,
11 and Defendants.

12 **Summary of Settlement**

13 **The Aggrieved Employees**

14 26. The “Aggrieved Employees” who are covered by the Settlement Agreement are all
15 individuals employed as non-exempt, hourly employees by Defendants within the State of
16 California during the period from February 23, 2023, through the date the Court grants approval of
17 the Settlement (“PAGA Period”). Based on information provided by Defendants prior to mediation,
18 Plaintiffs believe there are approximately 1,050 Aggrieved Employees in the PAGA Period.

19 **Settlement Terms**

20 27. The Settlement provides for a non-reversionary Gross Settlement Amount (“GSA”)
21 of \$640,000.00. To prevent dilution of the settlement, the Agreement provides that the MSA may
22 be increased The GSA shall be allocated as follows:

23 **Net Settlement Amount**

24 28. The amount of the GSA that remains after deducting the PAGA Representative
25 Service Payment to Plaintiffs (\$20,000.00), Settlement Administration Costs (\$8,000.00), Plaintiffs’
26 Counsel’s Attorneys’ Fees (\$224,000.00), and Plaintiffs’ Counsel’s Attorneys’ Costs (\$26,363.83)
27 will be designated as the Net Settlement Amount (“NSA”). If the Court approves those allocations,
28 the total estimated amount of the Net Settlement Amount is \$361,628.67 as the same may be

1 escalated pursuant to the Settlement Agreement. Pursuant to the Settlement Agreement and Labor
2 Code section 2699(i), 75% of the Net Settlement Amount, or \$271,221.50 (as the same may be
3 escalated pursuant to the Settlement Agreement) will be paid to the LWDA, and the remaining 25%,
4 or \$90,407.17 as the same may be escalated pursuant to the Settlement Agreement) of the Net
5 Settlement Amount will be paid to the Aggrieved Employees on a *pro rata* basis using their
6 respective number of Pay Periods worked during the Settlement Period. The estimate average
7 payment to Aggrieved Employees is approximately \$86.10 (\$90,407.17 / 1,050 Aggrieved
8 Employees).

9 **Settlement Administrator and Costs of Administering the Settlement**

10 29. The Parties have agreed that the Settlement Administrator will be ILYM Group, Inc.
11 (“ILYM”). The cost of administering the Settlement, including but not limited to, mailing the
12 Individual PAGA Award(s) to the Aggrieved Employees, shall not exceed \$8,000.00 and will be
13 paid to the Settlement Administrator from the Maximum Settlement Amount.

14 30. “Individual PAGA Award(s)” means the Aggrieved Employees’ pro-rata shares of
15 twenty-five percent (25%) of the Net Settlement Amount. The pro-rata shares are calculated by
16 dividing twenty-five percent of the Net Settlement Amount by the total number of pay periods all
17 Aggrieved Employees worked during the PAGA Period and then multiplying by the number of pay
18 periods each Aggrieved Employee worked during the PAGA Period.

19 **Plaintiff’s Counsel’s Attorneys’ Fees and Costs**

20 31. An award of attorneys’ fees is requested to Plaintiffs’ Counsel in an amount of not
21 more than thirty-five percent (35%) of the Maximum Settlement Amount, which unless escalated
22 pursuant to the Settlement Agreement, will be \$224,000.00 as well as reimbursement of litigation
23 costs reasonably incurred in an amount of \$26,371.33. (Declaration of David D. Bibiyan ¶¶ 3, 19;
24 Declaration of Jean-Claude Lapuyade; Declaration of Shani O. Zakay; Declaration of Kenneth
25 Seligson).

26 **PAGA Representative Service Payments**

27 32. A PAGA Representative Service Payment in the amount not to exceed \$10,000.00
28 to each Plaintiff for a total of \$20,000 to Plaintiffs (in addition to any Individual PAGA Payments

1 they are entitled to receive as Aggrieved Employees), for their services on behalf of the State of
2 California (“the State”) and the Aggrieved Employees, which included assisting Plaintiffs’ Counsel
3 with the investigation, litigation, and settlement, participation in mediation, as well as for their full
4 release of their individual claims, known and unknown, against Defendants, including waivers of
5 Plaintiffs’ rights under California Civil Code Section 1542.

6 **Settlement Administration**

7 33. Within 14 calendar days after the Effective Date, Defendants shall provide to the
8 Administrator the Aggrieved Employee Data in the form of a Microsoft Excel spreadsheet.
9 “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendants’
10 possession including the Aggrieved Employee’s name, last-known mailing address, phone number,
11 Social Security number, and hire dates, termination dates (as applicable) and re-hire dates (as
12 applicable).

13 34. “Effective Date” means the date by when both of the following have occurred: (a)
14 the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is
15 final. The Judgment is final on the day the Court enters Judgment.

16 35. Defendants shall fully fund the Gross Settlement Amount by transmitting the funds
17 to the Administrator within 15 business days of the Effective Date. Within 30 business days of the
18 Effective Date, the Administrator will mail checks for all Individual PAGA Payments, the LWDA
19 PAGA Payment, the Administration Expenses Payment, the PAGA counsel fees, and the PAGA
20 Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses
21 Payment shall not precede disbursement of Individual PAGA Payments.

22 **Taxes**

23 36. Because this is a settlement of a representative action for civil penalties only, the
24 Administrator will issue IRS Forms 1099-MISC to Aggrieved Employees for their Individual PAGA
25 Payments.

26 **Release**

27 37. Upon full execution of the Settlement Agreement, approval by the Court, and
28 payment of the Gross Settlement Amount, all Aggrieved Employees are deemed to release, on behalf

1 of themselves and their respective former and present representatives, agents, attorneys, heirs,
2 administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties
3 that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative
4 Complaint and the PAGA Notices, including violations of California Labor Code §§ 96, 98.6, 201,
5 201.3, 202, 203, 204, 210, 212, 213, 218.5, 218.6, 221, 223, 226, 226.2, 226.3, 226.7, 227.3, 232,
6 232.5, 245, et seq., 246, 404, 432, 432.3, 432.7, 432.8, 510, 511, 512, 516, 558, 1102.5, 1174,
7 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.14, 1197.5, 1198.5, 1199, 1527, 2802, 2804,
8 2810.5, 2699, 3366, 3457, 8397.4, Cal. Code Regs, title 8 § 110404, Cal. Code Regs, title 8 § 3395,
9 the IWC Wage Orders, Business & Professions Code §§ 17200, et seq., 16600, 16700, and
10 Government Code § 12952 as to the Aggrieved Employees . The time period for this release is the
11 PAGA Period.

12 **Escalator Provision**

13 38. The Agreement is based on Defendants' representation that there are 40,000 pay
14 periods from the start of the PAGA Period through the end of the PAGA Period increase by more
15 than 10%, Defendants shall increase the Gross Settlement Amount by a proportionate amount or
16 Defendants can unilaterally elect to modify the PAGA Period to end on the date the pay periods
17 reach, but not exceed 44,000 pay periods. For example, if the number of pay periods during this
18 period increases by 4%, the Gross Settlement Amount shall not increase. If the number of pay
19 periods during this period increases by 16%, the Gross Settlement Amount shall increase by 6% or
20 the PAGA Period will end on the date the pay periods reach 44,000. Defendants shall make their
21 election no later than 7 calendar days after receiving sufficient information from the Settlement
22 Administrator that the number of pay periods has exceeded 44,000.

23 **Uncashed Checks**

24 39. Upon the deadline (180 calendar days) to cash the settlement checks, any
25 uncashed/undeliverable checks will automatically be cancelled by the Administrator if not cashed
26 within that time and the funds associated with such cancelled checks will be transmitted to the
27 California State Controller's Office's Unclaimed Property Division to be held as unclaimed funds
28 in the Aggrieved Employee's name.

Argument

**The PAGA Penalties Secured by the Settlement are Genuine and Meaningful, and Fulfill
PAGA's Underlying Purpose to Benefit the Public**

40. Here, Plaintiffs' Counsel believes the Settlement penalizes Defendants for its alleged violation of California's labor laws, provides a significant benefit of \$271,221.50 to the State and also provides relief to the Aggrieved Employees that is genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public. Lastly, the Gross Settlement Amount of \$640,000.00 is significant enough to deter Defendants from future violations. Accordingly, the Settlement fulfills the underlying purpose of the statute and confers a substantial benefit on the public.

The Settlement is Reasonable Given the Risks of Further Litigation

41. I understand that, because in this instance, there was no evidence that Defendants were provided notice that they were in violation of the Labor Code, initial violation rates were used to calculate penalties.

42. At the time of mediation and based on the records produced by Defendants, Plaintiffs understood there to be 40,000 pay periods through mediation. While PAGA Counsel are informed and believes that reasonable minds differ with regard to calculation of PAGA penalties, Plaintiffs' Counsel believe one reasonable calculation of Defendants' maximum exposure in PAGA penalties is as follows:

(1) Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of \$100 for an initial violation and \$200 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of \$4,000,000 (40,000 pay periods x \$100).

(2) Overtime Violations: Labor Code section 558 prescribes penalties of \$50 for an initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of \$2,000,000

(40,000 pay periods x \$50).

(3) Meal Period Violations: Labor Code section 558 prescribes penalties of \$50 for an initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of \$2,000,000 (40,000 pay periods x \$100).

(4) Rest Period Violations: Labor Code section 558 prescribes penalties of \$50 for an initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of \$2,000,000 (40,000 pay periods x \$50).

(5) Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021) 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty for wage statement violations that are inaccurate, which prescribes penalties of \$100 for an initial violation and \$200 for each subsequent violation. (*Id.* at 247-248.) Using the initial pay period rate for all violations, and a violation every single pay period for every single Aggrieved Employees in the PAGA Period, this amounts to a maximum exposure of \$4,000,000 (40,000 pay periods x \$100).

(6) Waiting Time Penalties: Labor Code section 558 prescribes penalties of \$50 for an initial violation and \$100 for each subsequent violation. Because this violation is merited only at separation of employment, a 100% violation rate would likely include be just one violation per employee. Plaintiffs' Counsel contends that there were approximately 55 Aggrieved Employees separated from the company during the relevant time period. This amounts to a maximum exposure of \$5,500 (55 Aggrieved Employees x \$100).

(7) Failure to Reimburse Work Expenses: Labor Code section 2699 would be the appropriate penalty for failure to reimburse work expenses, which prescribes penalties of \$100 for an initial violation and \$200 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single Aggrieved

1 Employees in the PAGA Period, this amounts to a maximum exposure of \$4,000,000
2 (40,000 pay periods x \$100).

3 43. In sum, Plaintiffs' Counsel calculated Defendants' total maximum exposure for
4 PAGA violations if the Court were to find a 100% violation rate for every Aggrieved Employee
5 every pay period, allow "stacking" of PAGA Penalties (i.e. multiple penalties for different Labor
6 Code violations in the same pay period), and not exercise its discretion to reduce any of those
7 penalties to be \$18,005,500.

8 44. On the other hand, Plaintiffs' Counsel understands that Defendants argued the
9 following in connection with this claim: Defendants contend that no PAGA penalties are likely to
10 be awarded and, even if they were, the maximum exposure calculated by Plaintiffs are vastly
11 overstated. First, Defendants defend that PAGA penalties cannot and should not be stacked,
12 specifically including penalties arising from violations of Labor Code sections 201-203, 204, and
13 226, and that, even if they could, very few Courts have ever exercised discretion to stack them.
14 Second, Defendants deny that a violation for each pay period can be established. Third, Defendants
15 contend that a Court is unlikely to exercise its discretion to award civil penalties under PAGA where,
16 as here, Defendants contend there is no conduct that would show any Labor Code violations by
17 Defendants, if any, is knowing and intentional that would justify PAGA penalties. Finally,
18 Defendants assert that individualized issues predominate the PAGA claims, making the claims
19 unmanageable for trial. Thus, Defendants contend that no PAGA penalties should be awarded and
20 even if they were, the Court should exercise its discretion to award much less than the total
21 maximum exposure.

22 45. While Plaintiffs are confident in the merits of the case, a legitimate controversy exists
23 as to each predicate Labor Code violation. For example, Plaintiffs contend that the Aggrieved
24 Employees were subjected to, *inter alia*, not being paid for all time under Defendants' control,
25 unlawful meal and rest break policies, and were denied meal and rest break premiums. Defendants
26 refute these contentions, claiming, for example, that everyone was paid for all time worked, they
27 authorized and permitted rest breaks, and provided meal periods.

1 46. Plaintiffs also considered the fact that continued litigation would be expensive, time-
2 consuming and an uncertain proposition, involving a trial and possible appeals, and would delay
3 any recovery to the State and the Aggrieved Employees. There is also a substantial risk that the
4 Court would reduce the award even if Plaintiffs successful or otherwise exercises its discretion not
5 to award penalties at all even if Labor Code violations are found. In contrast, if the Court approves
6 the Settlement, the Aggrieved Employees will receive timely relief and avoid the risk of an
7 unfavorable judgment. Plaintiffs objectively and knowledgably balanced the strengths and
8 weaknesses of their claims, the likelihood of reaching a trial, and the likelihood of success at trial
9 against the risk of continued litigation and was able to determine a realistic range of settlement
10 recovery for PAGA penalties.

11 47. As such, Plaintiffs' Counsel believes a 75% discount of this theoretical maximum
12 exposure, resulting in **\$4,501,375 to be a reasonable estimate of the likelihood of what Plaintiffs**
13 **may potentially recover at trial for PAGA penalties** (\$18,005,500 x 0.25). *See also Carrington*
14 *v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (upholding trial courts 90% reduction in
15 maximum penalties, from \$50 to \$5 per initial violation). In all, Plaintiffs' Counsel obtained a
16 Maximum Settlement Amount of \$640,000.00.

17 48. Thus, when the risks of litigation, including, without limitation, the burdens of proof
18 necessary to establish liability, and the mixed case law on manageability, that no recovery may have
19 been possible whatsoever, as well as the probability of appeal of a favorable judgment are
20 considered, it is clear that the Settlement is reasonable and in the best interest of the State and the
21 public. The Settlement therefore accomplishes PAGA's objectives by imposing sufficient civil
22 penalties "to punish and deter" Defendant from future alleged Labor Code violations, while also
23 ensuring that the penalties are not "unjust, arbitrary and oppressive, or confiscatory." (Lab. Code,
24 § 2699, subd. (e)(2); *Iskanian*, 59 Cal.4th at 384.)

25 **Plaintiffs' Counsel's Hourly Rates are Reasonable**

26 49. Attached hereto as Exhibit 3 is the National Law Journal Survey.

27 50. Attached hereto as Exhibit 4 is the Declaration of Richard Pearl.

1 51. I believe attorneys of Bibiyan Law Group, P.C. experienced litigators who specialize
2 in employment law, with a substantial PAGA and wage-and-hour class action practice. Moreover,
3 similar rates for the attorneys and staff of Plaintiffs' Counsel have been approved by various
4 California Superior Courts, including just this month. Given the skill and experience of Plaintiffs'
5 Counsel in this case, and the excellent result achieved for the State and other PAGA Members, the
6 requested rates are reasonable.

7 **The Settlement Administrator Costs are Reasonable**

8 52. The Settlement Administrator's request for costs of up to \$8,000.00 is reasonable,
9 given the tasks to be performed by the Settlement Administrator, including but not limited to:
10 receiving and processing the Aggrieved Employees data; establishing a settlement fund; calculating
11 and mailing Individual PAGA Payments to the Aggrieved Employees along with the Notice of
12 Settlement to Aggrieved Employees via First Class U.S. Mail, postage prepaid; providing the
13 Parties' counsel reports regarding administration of the Settlement Agreement as needed or
14 requested; if a Notice of Settlement to Aggrieved Employees and check for Individual PAGA
15 Payment from the initial mailing is returned as undeliverable during the check-cashing period, the
16 Settlement Administrator will attempt to obtain a current address for the PAGA Member to whom
17 the returned Notice of Settlement to Aggrieved Employees and check for Individual PAGA Payment
18 had been mailed within three (3) calendar days of receipt of the returned Notice of Settlement to
19 Aggrieved Employees and/or Individual PAGA Payment check, by: (a) contacting the PAGA
20 Member by phone, if possible, (b) undertaking all reasonable efforts to identify the Aggrieved
21 Employees' correct address, and (c) undertaking skip tracing; if the Settlement Administrator is
22 successful in obtaining a new address, it will promptly remail the Notice of Settlement to Aggrieved
23 Employees and Individual PAGA Payment check to the PAGA Member at his or her updated
24 address within three (3) business days; providing necessary reports and declarations; and performing
25 other such duties as the Parties and/or the Courts direct. Thus, the Settlement Administrator's costs
26 should be approved.

27 **Submission to the LWDA**

28 53. On or around April 27, 2026, my office submitted a copy of the Settlement

1 Agreement to the California Labor and Workforce Development Agency (“LWDA”) in
2 compliance with Labor Code section 2699, subdivision (l)(2). A true and correct copy of the
3 confirmation from the LWDA in connection with Plaintiffs is attached hereto as Exhibit “5.”

4 I declare under penalty of perjury under the laws of the state of California that the
5 foregoing is true and correct this April 27, 2026, at Los Angeles, California.

6 */s/ Vedang J. Patel*

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8 Vedang J. Patel
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EXHIBIT 1

BIBIYAN LAW GROUP, P.C.
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Attorneys for Plaintiff, JAIME ZAMORA FIDEL,
on behalf of himself and all others similarly situated and aggrieved

[Additional Counsel on Next Page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JAIME ZAMORA FIDEL, as an aggrieved
employee, and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys' General Act of 2004,

Plaintiff,

v.

DICK BROWNING, INC., a California
corporation; CERRITOS DODGE, INC., a
California corporation; VICTORVILLE
NISSAN, INC., a California corporation;
HIGH DESERT AUTOS, INC., a California
corporation; DAV, INC., a California
corporation; VAHI, INC., a California
corporation; AUTO SQUARE AUTOS, INC.,
a California corporation; TRIANGLE
MOTORS, INC., a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 24STCV11259

[Assigned to the Hon. Maurice A. Leiter in
Dept. 54]

PAGA SETTLEMENT AGREEMENT

Action Filed: May 6, 2024

Trial Date: November 17, 2025

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CERRITOS DODGE, INC., VICTORVILLE NISSAN, INC.,
20 HIGH DESERT AUTOS, INC., DAV, INC., VAHI, INC.,
AUTO SQUARE AUTOS, INC., TRIANGLE MOTORS, INC.

1 This PAGA Settlement Agreement (“Settlement,” “Agreement” or “Settlement
2 Agreement”) is made by and between plaintiff Jaime Zamora Fidel (“Plaintiff Fidel”) and
3 Plaintiff Jessy Vargas (“Plaintiff Vargas” and together with Plaintiff Fidel, the “Plaintiffs”),
4 individually and on behalf of the Aggrieved Employees; and defendants Dick Browning, Inc.,
5 Cerritos Dodge, Inc., Victorville Nissan, Inc., High Desert Autos, Inc., Dav, Inc., Vahi, Inc., Auto
6 Square Autos, Inc., Triangle Motors, Inc., TOV Motors, Inc., and TOM Motors, Inc.
7 (collectively, “Defendants”). The Agreement refers to Plaintiffs and Defendants collectively as
8 “Parties,” or individually as “Party.”

9 **1. DEFINITIONS**

10 **1.1. “Action”** means Plaintiffs’ PAGA lawsuit alleging wage and hour violations
11 against Defendants captioned *Fidel v. Dick Browning, Inc. et al.*, Case No. 24STCV11259
12 initiated on May 6, 2024, in the Superior Court of the State of California, County of Los Angeles.

13 **1.2. “Administrator”** means ILYM Group, Inc., the neutral entity the Parties have
14 agreed to appoint to administer the Settlement.

15 **1.3. “Administration Expenses Payment”** means the amount the Administrator will
16 be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
17 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
18 with approval of this Settlement.

19 **1.4. “Aggrieved Employees”** means all individuals employed as non- exempt, hourly
20 employees by Defendants within the State of California during the PAGA Period.

21 **1.5. “Aggrieved Employee Data”** means Aggrieved Employee identifying
22 information in Defendants’ possession including the Aggrieved Employee’s name, last-known
23 mailing address, phone number, Social Security number, and hire dates, termination dates (as
24 applicable) and re-hire dates (as applicable).

1 **1.6. “Aggrieved Employee Address Search”** means the Administrator’s
2 investigation and search for current Aggrieved Employees’ mailing addresses using all
3 reasonably available sources, methods and means, including, but not limited to, the National
4 Change of Address database, skip traces and direct contact by the Administrator with Aggrieved
5 Employees.

6 **1.7. “Court”** means the Superior Court of California, County of Los Angeles.

7 **1.8. “Defense Counsel”** means Nicole Golob, Hannah Sweiss, and Harrison M.
8 Thorne of Fisher & Phillips LLP.

9 **1.9. “Effective Date”** means the date by when both of the following have occurred:
10 (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the
11 Judgment is final. The Judgment is final on the day the Court enters Judgment.

12 **1.10. “Gross Settlement Amount”** means Six Hundred Forty Thousand Dollars and
13 Zero Cents (\$640,000.00), which is the total amount Defendants agree to pay under the settlement
14 except as provided in Paragraph 8.1 below. The Gross Settlement Amount will be used to pay
15 Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA
16 Counsel Litigation Expenses Payment and the Administrator’s Expenses Payment.

17 **1.11. “Individual PAGA Payment”** means the Aggrieved Employee’s pro rata share
18 of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved
19 Employee worked during the PAGA Period.

20 **1.12. “Judgment”** means the judgment entered by the Court based upon the Final
21 Approval.

22 **1.13. “LWDA”** means the California Labor and Workforce Development Agency, the
23 agency entitled, under Labor Code section 2699, subd. (i).

1 **1.14. “LWDA PAGA Payment”** means the 75% of the PAGA Penalties paid to the
2 LWDA under Labor Code section 2699, subd. (i).

3 **1.15. “Net Settlement Amount”** means the Gross Settlement Amount, less the
4 following payments in the amounts approved by the Court: Individual PAGA Payments, the
5 LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses
6 Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved
7 Employees as Individual PAGA Payments.

8 **1.16. “PAGA Counsel”** means David D. Bibiyan and Vedang J. Patel of Bibiyan Law
9 Group, P.C.; Shani O. Zakay of Zakay Law Group, APC.; Jean-Claude Lapuyade and Tesla Stone
10 of JCL Law Firm, APC.; and Kenneth Seligson and Ross Tizes of Seligson Law P.C. The term
11 “PAGA Counsel” shall be used synonymously with the term “Plaintiffs’ Counsel.”

12 **1.17. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses**
13 **Payment”** mean the amounts allocated to PAGA Counsel for reimbursement of reasonable
14 attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

15 **1.18. “PAGA Pay Period” or “Pay Period”** means any Pay Period during which an
16 Aggrieved Employee worked for Defendants during the PAGA Period, based on hire dates,
17 termination dates (if applicable) and re-hire dates (if applicable).

18 **1.19. “PAGA Period”** means the period from February 23, 2023, through the date the
19 Court grants approval of the Settlement.

20 **1.20. “PAGA”** means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

21 **1.21. “PAGA Notice”** means Plaintiffs’ letters to Defendants and the LWDA providing
22 notice pursuant to Labor Code section 2699.3, subd. (a).
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24
25

1 **1.22. “PAGA Penalties”** means the total amount of PAGA civil penalties to be paid
2 from the Net Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to
3 LWDA in settlement of PAGA claims.

4 **1.23. “Plaintiffs”** means Jaime Zamora Fidel and Jessy Vargas, the named plaintiffs in
5 the Action.

6 **1.24. “Approval Order”** means the proposed Court Order Granting Approval of
7 PAGA Settlement.

8 **1.25. “Released PAGA Claims”** means the claims being released by the Plaintiffs and
9 PAGA Counsel and as described in Paragraph (5) below.

10 **1.26. “Released Parties”** means the Defendants, and each of their former and present
11 directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors,
12 assigns, subsidiaries, and affiliates.

13 **1.27. “Settlement”** means the disposition of the Action effected by this Agreement and
14 the Judgment.

15 **1.28. “Defendants”** means the named Defendants, Dick Browning, Inc., Cerritos
16 Dodge, Inc., Victorville Nissan, Inc., High Desert Autos, Inc., Dav, Inc., Vahi, Inc., Auto Square
17 Autos, Inc., Triangle Motors, Inc., TOV Motors, Inc., and TOM Motors, Inc., collectively.

18 **2. RECITALS**

19 **2.1.** On October 11, 2022, Plaintiff Vargas filed with the LWDA and served on
20 Defendant Auto Square Autos, Inc. a notice under Labor Code section 2699.3 stating Plaintiff
21 Vargas intended to serve as a proxy of the LWDA to recover civil penalties on behalf of
22 Aggrieved Employees for alleged Labor Code violations.

23 **2.2.** On December 22, 2022, Plaintiff Vargas filed a PAGA action in the Superior
24 Court of Los Angeles, Case No. 22NWCV01696 against Defendant Auto Square Autos, Inc.,
25

1 alleging: (1) Failure to provide compliant meal and rest breaks; (2) Failure to allow employees
2 to take duty-free meal and rest periods; (3) Failure to pay all minimum, regular, and overtime
3 wages; (4) Failure to correctly calculate the regular rate of pay; (5) Failure to pay for all hours
4 worked; (6) Failure to maintain true and accurate records; (7) Failure to reimburse for required
5 business expenses; (8) Failure to provide accurate wage statements; and (9) Failure to timely pay
6 wages due during, and upon termination of employee.

7 **2.3.** On February 23, 2024, Plaintiff Fidel filed with the LWDA and served on
8 Defendants Dick Browning, Inc., Cerritos Dodge, Inc., Victorville Nissan, Inc., High Desert
9 Autos, Inc., Dav, Inc., Vahi, Inc., Auto Square Autos, Inc., and Triangle Motors, Inc., a notice
10 under Labor Code section 2699.3 stating Plaintiff Fidel intended to serve as a proxy of the LWDA
11 to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations
12 (“PAGA Notice”).

13 **2.4.** On February 26, 2024, Plaintiff Fidel filed his wage and hour class action lawsuit
14 against Defendants Dick Browning, Inc., Cerritos Dodge, Inc., Victorville Nissan, Inc., High
15 Desert Autos, Inc., Dav, Inc., Vahi, Inc., Auto Square Autos, Inc., and Triangle Motors, Inc. in
16 the Superior Court of Los Angeles, Case No. 24STCV04920, alleging: (1) failure to pay overtime
17 wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to
18 provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to
19 timely pay wages; (8) failure to indemnify; (9) failure to pay interest on deposits; (10) violation
20 of labor code section 227.3; and (11) unfair competition (the “Class Action”).

21 **2.5.** On May 6, 2024, Plaintiff Fidel filed a PAGA complaint in the Superior Court of
22 California for the County of Los Angeles, on behalf of himself and all other aggrieved employees
23 for the alleged violations in the PAGA Notice (“PAGA Action”). The PAGA Complaint names
24 as defendants Dick Browning, Inc., Cerritos Dodge, Inc., Victorville Nissan, Inc., High Desert
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Autos, Inc., Dav, Inc., Vahi, Inc., Auto Square Autos, Inc., and Triangle Motors, Inc. Plaintiff Fidel agrees to further amend the PAGA Complaint, to add and/or consolidate all of the claims and entities negotiated as part of the mediation (*i.e.*, all Defendants), as well as to add Plaintiff Vargas as a named plaintiff. The amended complaint will be deemed the “Operative Complaint”. Plaintiffs agree to: (1) submit an amended PAGA Letter on behalf of both plaintiffs and that alleges all claims alleged in operative Fidel complaint, Vargas complaint, and existing PAGA Letters; (2) that they will submit an amended complaint on behalf of both plaintiffs and that alleges all claims alleged in operative Fidel complaint, Vargas complaint, and existing PAGA Letters, and amended PAGA Letter; and (3) that Defendants will stipulate to the filing of an amended complaint provided it does just the above.

2.6. On June 25, 2024, the Class Action was dismissed. On October 17, 2024, the parties participated in an all-day mediation on a PAGA-only basis presided over by Lynn Frank, which led to the present settlement of this case on a PAGA basis only.

2.7. Prior to mediation, Plaintiff obtained, through informal discovery: (1) time and pay records for approximately 80% of Aggrieved Employees for the period from February 23, 2023 through June 15, 2024; (2) data points, including the number of Aggrieved Employees, the number of Aggrieved Employees separated from employment during the waiting time penalty period, the average hourly rate, and the number of Pay Periods and shifts during the period from February 23, 2023 through June 15, 2024; (3) all relevant policy documents of Defendants; and (4) Plaintiffs’ personnel files.

2.8. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS

1 **3.1. Gross Settlement Amount.** Except as otherwise provided by Paragraph 8.1
2 below, Defendants agree to pay \$640,000.00 and no more as the Gross Settlement Amount.
3 Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated
4 in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement
5 Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of
6 payment. None of the Gross Settlement Amount will revert to Defendants.

7 **3.2. Payments from the Gross Settlement Amount.** The Administrator will make
8 and deduct the following payments from the Gross Settlement Amount, in the amounts specified
9 by the Court in the Final Approval:

10 **3.2.1 To PAGA Counsel:** A PAGA Counsel Fees Payment of not more than
11 35% which is currently estimated to be \$236,250.00, and PAGA Counsel
12 Litigation Expenses Payment of not more than \$30,000.00. Defendants
13 will not oppose requests for Court approval of these payments provided
14 that they do not exceed these amounts unless, in the event of a material
15 breach of this Agreement by Defendants, Plaintiffs are required to move
16 the Court for enforcement of this Agreement. Plaintiffs and/or PAGA
17 Counsel will file an application or motion for PAGA Counsel Fees
18 Payment and PAGA Litigation Expenses Payment. If the Court approves
19 a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation
20 Expenses Payment less than the amounts requested, the Administrator will
21 allocate the remainder to the Net Settlement Amount. Released Parties
22 shall have no liability to PAGA Counsel or any other Plaintiffs' Counsel,
23 or Aggrieved Employees arising from any claim to any portion any PAGA
24 Counsel Fees Payment and/or PAGA Counsel Litigation Expenses
25

1 Payment. The Administrator will pay the PAGA Counsel Fees Payment
2 and PAGA Counsel Litigation Expenses Payment using one or more IRS
3 1099 Forms. PAGA Counsel assumes full responsibility and liability for
4 taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel
5 Litigation Expenses Payment and holds Defendants harmless, and
6 indemnifies Defendants, from any dispute or controversy regarding any
7 division or sharing of any of these Payments.

8 **3.2.2 To the Administrator:** An Administrator Expenses Payment not to
9 exceed \$8,000.00 except for a showing of good cause and as approved by
10 the Court. To the extent the Administration Expenses are less or the Court
11 approves payment less than \$8,000.00, the Administrator will retain the
12 remainder in the Net Settlement Amount.

13 **3.2.3 To the LWDA and Aggrieved Employees:** PAGA Penalties in the
14 amount of \$365,750.00 to be paid from the Gross Settlement Amount, with
15 75% (\$274,312.50) allocated to the LWDA PAGA Payment and 25%
16 (\$91,437.50) allocated to the Individual PAGA Payments.

17 **3.2.3.1** The Administrator will calculate each Individual PAGA Payment
18 by (a) dividing the amount of the Aggrieved Employees' 25% share
19 of PAGA Penalties (\$91,437.50) by the total number of PAGA
20 Period Pay Periods worked by all Aggrieved Employees during the
21 PAGA Period and (b) multiplying the result by each Aggrieved
22 Employee's PAGA Period Pay Periods. Aggrieved Employees
23 assume full responsibility and liability for any taxes owed on their
24 Individual PAGA Payment.
25

1 **3.2.3.2** If the Court approves PAGA Penalties of less than the amount
2 requested, the Administrator will allocate the remainder to the Net
3 Settlement Amount. The Administrator will report the Individual
4 PAGA Payments on IRS 1099 Forms.

5 **4. SETTLEMENT FUNDING PAYMENTS**

6 **4.1. Aggrieved Employee Pay Periods.** Based on a review of its records to date,
7 Defendants estimate there were 1,050 Aggrieved Employees who worked a total of 40,000
8 PAGA Pay Periods as of the date of mediation.

9 **4.2. Aggrieved Employee Data.** Within 14 days of the Effective Date, Defendants
10 will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel
11 spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator shall maintain
12 the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for
13 purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved
14 Employee Data to Administrator employees who need access to the Aggrieved Employee Data
15 to effect and perform under this Agreement. Defendants have a continuing duty to immediately
16 notify PAGA Counsel if they discover that the Aggrieved Employee Data omitted employee
17 identifying information and to provide corrected or updated Aggrieved Employee Data as soon
18 as reasonably feasible. Without any extension of the deadline by which Defendants must send
19 the Aggrieved Employee Data to the Administrator, the Parties and their counsel will
20 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
21 to missing or omitted Aggrieved Employee Data.

22 **4.3. Funding of Gross Settlement Amount.** Defendants shall fully fund the Gross
23 Settlement Amount by transmitting the funds to the Administrator within 15 business days of the
24 Effective Date.

1 **4.4. Payments from the Gross Settlement Amount.** Within 30 business days of the
2 Effective Date, the Administrator will mail checks for all Individual PAGA Payments, the
3 LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Litigation
4 Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not
5 precede disbursement of Individual PAGA Payments.

6 **4.4.1.** The Administrator will issue checks for the Individual PAGA Payments
7 and send them to the Aggrieved Employees via First Class U.S. Mail,
8 postage prepaid. The face of each check shall prominently state the date
9 (not less than 180 days after the date of mailing) when the check will be
10 voided. The Administrator will cancel all checks not cashed by the void
11 date. Before mailing any checks, the Settlement Administrator must update
12 the recipients' mailing addresses using the National Change of Address
13 Database.

14 **4.4.2.** The Administrator shall conduct an Aggrieved Employee Address Search
15 for all Aggrieved Employees whose checks are returned undelivered
16 without USPS forwarding address. Within 3 days of receiving a returned
17 check, the Administrator must re-mail checks to the USPS forwarding
18 address provided or to an address ascertained through the Aggrieved
19 Employee Address Search. The Administrator need not take further steps
20 to deliver checks to Aggrieved Employees whose re-mailed checks are
21 returned as undelivered. The Administrator shall promptly send a
22 replacement check to any Aggrieved Employee whose original check was
23 lost or misplaced, requested by the Aggrieved Employee prior to the void
24 date.

1 **4.4.3.** For any Aggrieved Employee whose Individual PAGA Payment check is
2 uncashed and cancelled after the void date, the Administrator shall
3 transmit the funds represented by such checks to the Controller of the State
4 of California pursuant to the Unclaimed Property Law, California Civil
5 Code § 1500, et seq., in the name of the Aggrieved Employee.

6 **4.4.4.** The payment of Individual PAGA Payments shall not obligate Defendants
7 to confer any additional benefits or make any additional payments to the
8 Aggrieved Employees (such as 401(k) contributions or bonuses) beyond
9 those specified in this Agreement.

10 **5. RELEASES OF CLAIMS**

11 **Release by Aggrieved Employees.** Upon full execution of the Settlement Agreement,
12 approval by the Court, and payment of the Gross Settlement Amount, all Aggrieved Employees
13 are deemed to release, on behalf of themselves and their respective former and present
14 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
15 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been
16 alleged, based on the facts stated in the Operative Complaint and the PAGA Notices, including
17 violations of California Labor Code §§ 96, 98.6, 201, 201.3, 202, 203, 204, 210, 212, 213, 218.5,
18 218.6, 221, 223, 226, 226.2, 226.3, 226.7, 227.3, 232, 232.5, 245, et seq., 246, 404, 432, 432.3,
19 432.7, 432.8, 510, 511, 512, 516, 558, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
20 1197.1, 1197.14, 1197.5, 1198.5, 1199, 1527, 2802, 2804, 2810.5, 2699, 3366, 3457, 8397.4,
21 Cal. Code Regs, title 8 § 110404, Cal. Code Regs, title 8 § 3395, the IWC Wage Orders, Business
22 & Professions Code §§ 17200, et seq., 16600, 16700, and Government Code § 12952 as to the
23 Aggrieved Employees and excluding all other claims, including claims for vested benefits,
24 wrongful termination, unemployment insurance, disability, social security, workers'
25

1 compensation, and PAGA claims outside of the PAGA Period. The time period for this release
2 is the PAGA Period.

3 **6. MOTION OR APPLICATION FOR APPROVAL OF**
4 **SETTLEMENT**

5 The Parties agree to jointly prepare and file an application or motion for approval of this
6 Settlement.

7 **6.1. Plaintiffs' Responsibilities.** Plaintiffs will prepare and deliver to Defense
8 Counsel all documents necessary for obtaining approval of this Settlement under Labor Code
9 Section 2699, subd. (f)(2) including (i) a draft proposed Order Granting Approval of PAGA
10 Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for
11 administering the Settlement and attesting to its willingness to serve; competency; operative
12 procedures for protecting the security of Aggrieved Employee Data; amounts of insurance
13 coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any
14 actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature
15 and extent of any financial relationship with Plaintiffs, PAGA Counsel or Defense Counsel; (iii)
16 a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA
17 of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd.
18 (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code
19 section 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all
20 modifications made to the Model Agreement ready for filing with the Court; and (v) all facts
21 relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the
22 Administrator. In their Declarations, Plaintiffs and PAGA Counsel shall aver that they are not
23 aware of any other pending matter or action asserting claims that will be extinguished or
24 adversely affected by the Settlement.

1 **6.2. Responsibilities of PAGA Counsel.** PAGA Counsel and Defense Counsel are
2 jointly responsible for expeditiously finalizing and filing the application or motion for approval
3 of this Settlement after the full execution of this Agreement and, if necessary, obtaining a prompt
4 hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA
5 Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

6 **6.3. Duty to Cooperate.** If the Parties disagree on any aspect of the proposed
7 application or motion for approval of this Settlement and/or the supporting declarations and
8 documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of
9 the Parties by meeting and conferring, and in good faith, to resolve the disagreement. If the Court
10 does not grant the motion for approval of this Settlement or conditions its approval on any
11 material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work
12 together on behalf of the Parties by meeting and conferring, and in good faith, to modify the
13 Agreement and otherwise satisfy the Court's concerns.

14 **7. SETTLEMENT ADMINISTRATION**

15 **7.1. Selection of Administrator.** The Parties have jointly selected ILYM Group, Inc.
16 to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc.
17 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
18 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
19 represent that they have no interest or relationship, financial or otherwise, with the Administrator
20 other than a professional relationship arising out of prior experiences administering settlements.

21 **7.2. Employer Identification Number.** The Administrator shall have and use its own
22 Employer Identification Number for purposes of calculating payroll tax withholdings and
23 providing reports state and federal tax authorities.
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1 **7.3. Qualified Settlement Fund.** The Administrator shall establish a settlement fund
2 that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury
3 Regulation section 468B-1.

4 **7.4. Administrator Duties.** The Administrator has a duty to perform or observe all
5 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

6 **8. AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR**
7 **CLAUSE**

8 Based on its records, Defendants estimate that, as of the date of mediation, there are 1,050
9 Aggrieved Employees who worked 40,000 Pay Periods during the PAGA Period.

10 **8.1 Increase in the Gross Settlement Amount.** Should the number of pay periods
11 from the start of the PAGA Period through the end of the PAGA Period increase by more than
12 10%, Defendants shall increase the Gross Settlement Amount by a proportionate amount or
13 Defendants can unilaterally elect to modify the PAGA Period to end on the date the pay periods
14 reach, but not exceed 44,000 pay periods. For example, if the number of pay periods during this
15 period increases by 4%, the Gross Settlement Amount shall not increase. If the number of pay
16 periods during this period increases by 16%, the Gross Settlement Amount shall increase by 6%
17 or the PAGA Period will end on the date the pay periods reach 44,000. Defendants shall make
18 their election no later than 7 calendar days after receiving sufficient information from the
19 Settlement Administrator that the number of pay periods has exceeded 44,000.

20 **9. CONTINUING JURISDICTION OF THE COURT**

21 The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the
22 Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or
23 Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-
24 Judgment matters as are permitted by law.

1 **9.1. Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms
2 and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and
3 PAGA Counsel Litigation Expenses Payment, the Parties and their respective counsel waive all
4 rights to appeal from the Judgment, including all rights to post-judgment and appellate
5 proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary
6 writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such
7 motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to
8 perform under this Agreement will be suspended until such time as the appeal is finally resolved
9 and the Judgment becomes final, except as to matters that do not affect the amount of the Net
10 Settlement Amount.

11 **10. ADDITIONAL PROVISIONS**

12 **10.1. No Admission of Liability or Representative Manageability for Other**
13 **Purposes.** This Agreement represents a compromise and settlement of highly disputed claims.
14 Nothing in this Agreement is intended or should be construed as an admission by Defendants
15 that any of the allegations in the Operative Complaint have merit or that Defendants have any
16 liability for any claims asserted; nor should it be intended or construed as an admission by
17 Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree that
18 representative treatment is for purposes of this Settlement only. If for any reason the Court does
19 not approve this Settlement, Defendants reserve all available defenses to the claims in the Action,
20 and Plaintiffs reserve the right to contest Defendants' defenses. The Settlement, this Agreement
21 and Parties' willingness to settle the Action will have no bearing on, and will not be admissible
22 in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement
23 and this Agreement).

1 **10.2. Integrated Agreement.** Upon execution by all Parties and their counsel, this
2 Agreement together with its attached exhibits shall constitute the entire agreement between the
3 Parties relating to the Settlement, superseding any and all oral representations, warranties,
4 covenants, or inducements made to or by any Party.

5 **10.3. Attorney Authorization.** PAGA Counsel and Defense Counsel separately
6 warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take
7 all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
8 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
9 terms of this Agreement including any amendments to this Agreement.

10 **10.4. Cooperation.** The Parties and their counsel will cooperate with each other and
11 use their best efforts, in good faith, to implement the Settlement by, among other things,
12 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
13 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
14 the form or content of any document necessary to implement the Settlement, or on any
15 modification of the Agreement that may become necessary to implement the Settlement, the
16 Parties will seek the assistance of a mediator and/or the Court for resolution.

17 **10.5. No Prior Assignments.** The Parties separately represent and warrant that they
18 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
19 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
20 action, or right released and discharged by the Party in this Settlement.

21 **10.6. No Tax Advice.** Neither Plaintiffs, PAGA Counsel, Defendants nor Defense
22 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
23 Settlement be relied upon as such within the meaning of United States Treasury Department
24 Circular 230 (31 CFR Part 10, as amended) or otherwise.
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1 **10.7. Modification of Agreement.** This Agreement, and all parts of it, may be
2 amended, modified, changed, or waived only by an express written instrument signed by all
3 Parties or their representatives, and approved by the Court.

4 **10.8. Agreement Binding on Successors.** This Agreement will be binding upon, and
5 inure to the benefit of, the successors of each of the Parties.

6 **10.9. Applicable Law.** All terms and conditions of this Agreement and its exhibits will
7 be governed by and interpreted according to the internal laws of the state of California, without
8 regard to conflict of law principles.

9 **10.10. Cooperation in Drafting.** The Parties have cooperated in the drafting and
10 preparation of this Agreement. This Agreement will not be construed against any Party on the
11 basis that the Party was the drafter or participated in the drafting.

12 **10.11. Confidentiality.** To the extent permitted by law, all agreements made, and orders
13 entered during Action and in this Agreement relating to the confidentiality of information shall
14 survive the execution of this Agreement.

15 **10.12. Use and Return of Aggrieved Employee Data.** Information provided to PAGA
16 Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data
17 provided to PAGA Counsel by Defendants in connection with the mediation, other settlement
18 negotiations, or in connection with the Settlement, may be used only with respect to this
19 Settlement, and no other purpose, and may not be used in any way that violates any existing
20 contractual agreement, statute, or rule of court.

21 **10.13. Headings.** The descriptive heading of any section or paragraph of this Agreement
22 is inserted for convenience of reference only and does not constitute a part of this Agreement.

23 **10.14. Calendar Days.** Unless otherwise noted, all reference to “days” in this Agreement
24 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
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1 weekend or federal legal holiday, such date or deadline shall be on the first business day
2 thereafter.

3 **10.15. Notice.** All notices, demands or other communications between the Parties in
4 connection with this Agreement will be in writing and deemed to have been duly given as of the
5 third business day after mailing by United States mail, or the day sent by email or messenger,
6 addressed as follows:

7 To Plaintiffs:

8 Bibiyan Law Group, P.C.
9 1460 Westwood Boulevard,
Los Angeles, California 90024

10 To Defendants:

11 Fisher & Phillips LLP
12 21600 Oxnard Street, Suite 650
Woodland Hills, California 91367

13 **10.16. Execution in Counterparts.** This Agreement may be executed in one or more
14 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
15 Agreement shall be accepted as an original. All executed counterparts and each of them will be
16 deemed to be one and the same instrument if counsel for the Parties will exchange between
17 themselves signed counterparts. Any executed counterpart will be admissible in evidence to
18 prove the existence and contents of this Agreement.

19 **10.17. Stay of Litigation.** The Parties agree that upon the execution of this Agreement
20 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
21 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
22 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
23 process.

24 **10.18. Severability.** In the event that one or more of the provisions contained in this
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Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such
invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendants'
Counsel and PAGA Counsel, on behalf of the Parties and the Aggrieved Employees, mutually
elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been
included in this Agreement.

IT IS SO AGREED:

Jaime Zamora Fidel 03/05/2026

For Plaintiff, Jaime Zamora Fidel

Matt Browning
Matt Browning (Feb 25, 2026 10:41:03 PST)

For Defendant, Dick Browning, Inc.

Matt Browning
Matt Browning (Feb 25, 2026 10:41:03 PST)

For Plaintiff, Jessie Vargas

For Defendant, Cerritos Dodge, Inc.

Matt Browning
Matt Browning (Feb 25, 2026 10:41:03 PST)

For Defendant, Victorville Nissan, Inc.

Matt Browning
Matt Browning (Feb 25, 2026 10:41:03 PST)

For Defendant, High Desert Autos, Inc.

Matt Browning
Matt Browning (Feb 25, 2026 10:41:03 PST)

For Defendant, Dav, Inc.

Matt Browning
Matt Browning (Feb 25, 2026 10:41:03 PST)

For Defendant, Vahi, Inc.

Matt Browning
Matt Browning (Feb 25, 2026 10:41:03 PST)

For Defendant, Auto Square Autos, Inc.

Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such
invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendants'
Counsel and PAGA Counsel, on behalf of the Parties and the Aggrieved Employees, mutually
elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been
included in this Agreement.

IT IS SO AGREED:

_____	<u>Matt Browning</u> Matt Browning (Feb 25, 2026 10:41:03 PST)
For Plaintiff, Jaime Zamora Fidel	For Defendant, Dick Browning, Inc.
_____	<u>Matt Browning</u> Matt Browning (Feb 25, 2026 10:41:03 PST)
<u>Jessy Vargas</u> Jessy Vargas (Mar 9, 2026 21:48:28 PDT)	_____
For Plaintiff, Jessy Vargas	For Defendant, Cerritos Dodge, Inc.
_____	<u>Matt Browning</u> Matt Browning (Feb 25, 2026 10:41:03 PST)
_____	_____
_____	For Defendant, Victorville Nissan, Inc.
_____	<u>Matt Browning</u> Matt Browning (Feb 25, 2026 10:41:03 PST)
_____	_____
_____	For Defendant, High Desert Autos, Inc.
_____	<u>Matt Browning</u> Matt Browning (Feb 25, 2026 10:41:03 PST)
_____	_____
_____	For Defendant, Dav, Inc.
_____	<u>Matt Browning</u> Matt Browning (Feb 25, 2026 10:41:03 PST)
_____	_____
_____	For Defendant, Vahi, Inc.
_____	<u>Matt Browning</u> Matt Browning (Feb 25, 2026 10:41:03 PST)
_____	_____
_____	For Defendant, Auto Square Autos, Inc.

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Matt Browning
Matt Browning (Feb 25, 2026 10:41:03 PST)

For Defendant, Triangle Motors, Inc.

Matt Browning
Matt Browning (Feb 25, 2026 10:41:03 PST)

For Defendant, TOV Motors, Inc.

Matt Browning
Matt Browning (Feb 25, 2026 10:41:03 PST)

For Defendant, TOM Motors, Inc.

David D. Bibiyan
Vedang J. Patel
Counsel for Plaintiff Fidel



Shani O. Zakay
Counsel for Plaintiff Vargas



Jean-Claude Lapuyade
Counsel for Plaintiff Vargas

Ken Seligson
Kenneth Seligson
Counsel for Plaintiff Vargas

Nicole Golob
Hannah Sweiss
Harrison M. Thorne
Counsel for Defendants

EXHIBIT A

NOTICE OF SETTLEMENT OF PAGA REPRESENTATIVE ACTION

Fidel v. Dick Browning, Inc. et al.

Superior Court of the State of California, County of Los Angeles Case No. 24STCV11259

[First and Last Name]

[Address 1]

[Address 2]

You are receiving this notice in connection with a Court-approved settlement (the “Settlement”) in the lawsuit entitled *Fidel v. Dick Browning, Inc. et al.*, filed in Superior Court of the State of California for the County of Los Angeles, Case No. 24STCV11259 (the “Action”), brought on a representative basis under the Labor Code Private Attorneys’ General Act of 2004 codified at California Labor Code section 2698, *et seq.* (“PAGA”). The plaintiff in the lawsuit is Jaime Zamora Fidel (“Plaintiff”) and the defendants are Dick Browning, Inc., Cerritos Dodge, Inc., Victorville Nissan, Inc., High Desert Autos, Inc., Dav, Inc., Vahi, Inc., Auto Square Autos, Inc., Triangle Motors, Inc., TOV Motors, Inc., and TOM Motors, Inc. (collectively, “Defendants”). The Settlement provides for recovery of civil penalties for alleged violations of the California Labor Code on behalf of all Aggrieved Employees, defined as all individuals employed as non- exempt, hourly employees by Defendants within the State of California during the period from February 23, 2023, through the date the Court grants approval of the Settlement (“PAGA Period”). The PAGA statute provides that 75% of any recovery pursuant to the Settlement be paid to the State of California and 25% of any recovery be paid to the PAGA Members.

Defendants deny all claims and allegations in the Action, deny that it owes any penalties and assert that they have fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendants have settled the Action. By settling the lawsuit, Defendants are not admitting that they have done anything wrong.

Effective on the date when Defendants fully fund the entire Gross Settlement Amount, upon full execution of the Settlement Agreement, and approval by the Court, Plaintiff and all 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 facts stated in the Operative Complaint and the PAGA Notice, including violations of California Labor Code §§ 96, 98.6, 201, 201.3, 202, 203, 204, 210, 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 404, 432, 432.3, 432.7, 432.8, 510, 511, 512, 558, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 1527, 2802, 2810.5, 2699, 3366, 3457, 8397.4, Cal. Code Regs, title 8 § 110404, Cal. Code Regs, title 8 § 3395, the IWC Wage Orders, Business & Professions Code §§ 17200, *et seq.*, 16600, 16700, and Government Code § 12952 as to the Aggrieved Employees and excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and PAGA claims outside of the PAGA Period. The time period for this release is the PAGA Period.

“Released Parties” means the Defendants, and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

By an Order dated [Approval Date], the Superior Court of California approved the Settlement of the Released Claims. By approving the Settlement, the Court did not decide in favor of either Plaintiff or Defendants.

According to Defendants’ records, you are an Aggrieved Employee and are therefore entitled to a share of the Settlement based upon the Court-approved allocation. Enclosed with this Notice is your settlement check for your share. The settlement check shall remain valid for one hundred eighty (180) days. Thereafter, the settlement check shall be canceled and funds associated with such checks shall be transmitted to the California Controller’s Unclaimed Property Fund in your name.

Defendants’ records indicate that you worked [Eligible Pay Periods] pay periods as a non-exempt, hourly-paid employee in California during the PAGA Period. Based on these records, your estimated payment as a PAGA Member would be [\$Estimated Award].

Please Note: One hundred percent (100%) of the payment you are receiving in connection with the Settlement will be considered penalties reported on IRS Form 1099, and may be subject to local, state or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax

advisors as to the tax consequences of your settlement payment. Neither Plaintiff nor Defendants have made any representations or warranties regarding the taxation of your settlement payment. Nothing in this Notice or any other communication shall constitute or be construed or relied upon as tax advice.

PLEASE DO NOT CALL OR WRITE THE COURT OR OFFICE OF THE CLERK TO ASK QUESTIONS ABOUT THE SETTLEMENT. IF YOU HAVE ANY QUESTIONS, YOU MAY CALL OR WRITE TO THE SETTLEMENT ADMINISTRATOR AT:

ILYM GROUP, INC.

WEBSITE

Phone:

EXHIBIT 2

February 23, 2024

PAGA NOTICE FILED ELECTRONICALLY

Re: Notice Letter of Jaime Zamora Fidel on Behalf of Himself and Aggrieved Employees Under California Labor section 2699.3

Employer:

DICK BROWNING, INC.
P.O. Box 367
Cerritos, CA 90701

DAV, INC.
P.O. Box 367
Cerritos, CA 90701

CERRITOS DODGE, INC.
P.O. Box 367
Artesia, CA 9070

VAHI, INC.
P.O. Box 367
Cerritos, CA 90701

VICTORVILLE NISSAN, INC.
P.O. Box 367
Cerritos, CA 90701

AUTO SQUARE AUTOS, INC.
P.O. Box 367
Cerritos, CA 90701

HIGH DESERT AUTOS, INC.
P.O. Box 1508
Victorville, CA 90703

TRIANGLE MOTORS, INC.
18803 Studebaker Road
Cerritos, CA 90703

To Whom It May Concern:

This letter shall constitute notice under Labor Code section 2699.3 (hereinafter “PAGA Notice”). The \$75 filing fee for the PAGA Notice was paid online by credit card at the time this PAGA Notice was submitted online to the Department of Industrial Relations.

This PAGA Notice concerns Jaime Zamora Fidel (“Employee”) employment with Employee’s former employers: Dick Browning, Inc.; Cerritos Dodge, Inc.; Victorville Nissan, Inc.; High Desert Autos, Inc.; DAV, Inc.; VAHI, Inc.; Auto Square Autos, Inc.; and Triangle Motors, Inc. Employee was employed as a non-exempt employee of Dick Browning, Inc. at, without limitation, 18827 Studebaker Road, Cerritos, California 90703, with duties that included, but were not limited to, working on vehicles that have been in a collision and need repair, disassembling vehicles, welding and cutting body of vehicles, and other duties in acting as a mechanic from

approximately November 2022 and through the present. In connection with the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 245, *et seq.*, Labor Code section 432, Labor Code section 1198.5, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech, Employee seeks to represent all employees of Dick Browning, Inc.; Cerritos Dodge, Inc.; Victorville Nissan, Inc.; High Desert Autos, Inc.; DAV, Inc.; VAHI, Inc.; Auto Square Autos, Inc.; Triangle Motors, Inc., and each of them, as well as their parents, subsidiaries and affiliates (hereinafter, collectively, "Employer"). On all other claims mentioned herein, Employee seeks to represent only non-exempt employees of Employer.

Employee and other aggrieved employees are covered by Labor Code section 510 and applicable Wage Orders. Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of requiring its employees to work more than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock, and/or go through security screenings and/or temperature checks off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, for paying straight pay instead of overtime pay, and by attempting but failing to properly implement an alternative workweek schedule ("AWS") (including, without limitation, by failing to implement a written agreement designating the regularly scheduled alternative workweek in which the specified number of work days and work hours are regularly recurring; failing to adopt the AWS in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit; failing to follow the notice/disclosures procedures prior to any AWS election; and/or failing to register an AWS election with the State of California, as required by Labor Code section 511 and applicable Wage Orders) all to the detriment of Employee and other aggrieved employees. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code sections 510, 1194, and applicable Wage Orders based on its practice of providing total compensation that is less than the required legal overtime compensation for the overtime worked, entitling Employee and other aggrieved employees to damages. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing to compensate Employee and other aggrieved employees with

minimum wages for all hours worked or otherwise under Employer's control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries; editing and/or manipulation of time entries to show less hours than actually worked; and failing to pay split shift premiums. In addition, Employee and other aggrieved employees were required to report to work, and did report, but were not put to work and/or were furnished less than half their usual or scheduled day's work without being paid for half the usual or scheduled work at their regular rate of pay. As such, Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 221, 223, 1197, 1182.12, Cal. Code Regs, title 8, section 110404(5)(A), and applicable Wage Orders based on its continued failure to pay minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual and liquidated damages under, without limitation, Labor Code sections 1194 and 1194.2. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of compelling its employees to work in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, without limitation: by interrupting meal periods; not providing timely meal periods; failing to provide first and second meal periods; providing short meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal periods; and auto-deducting meal periods that could not be auto-deducted by law or during which employees worked. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code section 512, entitling Employee and other aggrieved employees to premium payments under Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant meal periods, either at all or at the proper regular rate of pay. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant meal periods, as well as for failing to provide premium pay under Labor Code section 226.7.

Employee is informed and believes, and based thereon alleges, that Employer maintains policies or practices of compelling its non-exempt employees, including, without limitation, Employee, to work over four-hour periods (or major fractions thereof) without authorizing and permitting Employee and other aggrieved employees to take uninterrupted, timely, and complete ten-minute rest periods in which the employees are completely relieved of all of their duties, including, without limitation: by failing to provide rest periods all together; requiring that they be bundled together and/or with meal periods; interrupting them; requiring that employees carry

cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion; and not permitting employees to leave the premises; and otherwise requiring on-duty/on-call rest periods. As such, Employee is informed and believes, and based thereon alleges, that Employee and other aggrieved employees are entitled to relief under, without limitation, Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant rest periods, either at all or at the proper regular rate of pay. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant rest periods, as well as for failing to provide premium pay under Labor Code section 226.7.

Employee is informed and believes, and based thereon alleges, that Employer maintains policies or practices of failing to permit Employee and other aggrieved employees from taking cooldown rest periods as required under California Code of Regulations, Title 8, Section 3395 and premium pay in lieu thereof under Labor Code section 226.7. As a result, Employer would be liable for civil penalties under Labor Code sections 558 and 2699.

In addition to the above, Employee is informed and believes, and based thereon alleges that Employer failed and continue to fail to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, making it difficult for Employee and other aggrieved employees to calculate their unpaid wages and/or premium payments. Employer also failed to provide these documents to Employee and other aggrieved employees upon request. This would entitle Employee and other aggrieved employees to penalties prescribed by Labor Code sections 226 and 1198.5. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1174.5 and 2699.

As a result of, among other things, Employer's herein-described policy or practice of failing to: accurately record time; failing to pay overtime and minimum wages; provide meal periods; provide rest periods; and provide compensation in lieu of meal or rest periods; as described above, Employee is informed and believes, and based thereon alleges, that Employer also intentionally failed and continues to fail to furnish aggrieved employees, including, without limitation, Employee, with itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the legal name and address of the other; and other such information as required by Labor Code section 226, subdivision (a). Specifically, Employer intentionally failed to furnish employees with itemized wage statements that accurately reflect the hours worked by Employee and other aggrieved employees and the rates of pay at which they were or should have been paid (including due to failure to pay at the proper regular rate), thus resulting in a failure to reflect gross and net wages earned and paid at each rate, as well. Consequently, since Employer would have failed to comply with Labor Code section 226, subdivision (a), Employee and other aggrieved employees would be entitled to recover penalties under, without limitation, Labor Code section

226, subdivision (e). Employer would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer also failed and refused, and continue to fail and refuse, to timely pay compensation to Employee and other terminated or resigned employees, including but not limited to, all overtime wages owed; all minimum wages owed; and all premium pay owed as set out above, including, without limitation, for failure to pay at the proper regular rate of pay, among other things. Consequently, Employer would be liable for waiting time penalties for having violated California Labor Code sections 201, 202, and 203. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges, that Employer has or had a policy or practice of unlawfully deducting wages by issuing in payment of wages due, or to become due, or as an advance on wages to be earned: an order, check, draft, note, memorandum, gift card, or other acknowledgement of indebtedness, (unless it was negotiable and payable in cash, on demand, without discount, at some established place of business in the state), the name and address of which must but did not appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be but was not at least 30 days, the maker or drawer did not have sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment or any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money. Employee is further informed and believes, and based thereon alleges, that such wages were not compensated at the “regular rate” of compensation as provided under Labor Code sections 226.7 and 510, subsection (a). Consequently, Employee is informed and believes, and based thereon alleges, that Employee and other aggrieved employees are entitled to relief under, without limitation, Labor Code sections 212, 213, 226.7, and 510 subsection (a). Employer would thus be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

Employee is further informed and believes, and based thereon alleges that Employer failed and refused, and continues to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide Employee and other aggrieved employees with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employer, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employer under Labor Code section 2810.5. Employee is informed and believes that failure to provide such information, including rates of pay that are in effect, has permitted Employer to pay employees at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Employee is additionally informed and believes that the notice requirement of Labor Code section 2810.5 involves a mandatory payroll or workplace injury reporting. Among other relief, employees may collect from Employer in connection with these violations’ civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer also failed and refused, and continues to fail and refuse, to reimburse employees, including, without limitation, Employee and other aggrieved employees, with their costs incurred for driving personal vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits, separately laundering mandatory uniforms, for the purchase of tools and safety equipment, and for the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge of their duties, or of their obedience to the directions of Employer, as required by Labor Code section 2802, and other statutory and common law offenses. As a result, Employer are liable to reimburse Employee and other aggrieved employees for these costs incurred in furtherance of work duties. In addition, Employer would be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges, that Employer has or had a policy or practice of failing to reimburse deposits made, including uniform deposits together with all interest owed at the separation of employment in violation of Labor Code section 404, entitling Employee and other aggrieved employees to damages in the amount of the deposit and accrued interest. Employer would also be liable for civil penalties under Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges, that Employer has or had a policy or practice of failing to provide Employee and other aggrieved employees with all rights afforded to them under the Healthy Workplace Healthy Families Act of 2014, codified at Labor Code section 245, *et seq.*, including, without limitation, the amount of paid sick leave required to be provided pursuant to California and local laws. Employee is further informed and believes that the sick pay was not provided at the proper regular of pay as required under California law due to failure to properly calculate the regular rate. Employee is further informed and believes that Employer also did not permit its use upon request by Employee and other aggrieved employees as contemplated under California and local laws. Employee is additionally informed and believes that the notice requirement of Labor Code section 245 *et seq.* involves a mandatory payroll or workplace injury reporting. As such, Employer would be liable for civil penalties for violation of the paid sick leave regulations under Labor Code section 2699, as well as equitable, injunctive, or restitutionary relief, and reasonable attorneys' fees and costs.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to pay aggrieved employees their paid time off and vacation time owed upon separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3 and applicable Wage Orders. As such, Employer would be liable for civil penalties for violation of Labor Code section 227.3 under Labor Code section 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to pay aggrieved employees their wages in accordance with Labor Code Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month

during which the labor was performed, and labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Employee is informed and believes and based thereon alleges that Employer did not and do not pay Employee and other aggrieved employees in accordance with Labor Code Section 204. As such, Employee is informed and believes, and based thereon alleges that Employer violated Labor Code section 204. Employer would be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy of failing to provide all temporary workers with owed wages weekly by not later than the regular payday of the following week. As a result, pursuant to Labor Code section 201.3, Employer would be liable for civil penalties pursuant to Labor Code sections 201.3.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to provide all working employees with suitable seats when the nature of the work reasonably permits the use of seats. Employee is further informed and believes, and based thereon alleges that Employer has failed to place an adequate number of seats in reasonable proximity to the work area and/or permitted employees to use such seats when it does not interfere with the performance of their duties when employees are not engaged in the active duties of their employment and the nature of their work requires standing.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and/or other aggrieved employees from using or disclosing the skills, knowledge and experience they obtained at Employer for purposes of competing with Employer, including, without limitation, preventing Employees from disclosing their wages in negotiating a new job with a prospective employer, and from disclosing who else works at Employer and under what circumstances that they might be receptive to an offer from a rival employer. As such, Employee is informed and believes that this violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor Code sections 232, 232.5, and 1197.5, subdivision (k). Employer would be liable for civil penalties pursuant to Labor Code section 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and/or other aggrieved employees from disclosing violations of state and federal law, either within Employer to their managers or outside Employer to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. In addition, Employee is informed and believes that these policies and/or practices prevent Employee and/or other aggrieved employees from disclosing information about unsafe or discriminatory working conditions, or about wage and hour violations in violation of Labor Code section 232 and 232.5. These violations of the Labor Code would expose Employer to liability for civil penalties pursuant to Labor Code section 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and/or other aggrieved employees from engaging in lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose wages, working conditions, and illegal conduct, including, without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5, subdivision (k). Employee is informed and believes that this lawful conduct includes the exercise of Employee and/or other aggrieved employee's constitutional rights of freedom of speech and economic liberty and would thus expose Employer to liability for civil penalties pursuant to Labor Code section 2699.

Employee is informed and believes, and based thereon alleges that Employer violated section 1527, 3366, 3457 and 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets to be used by each sex of employee.

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of conducting unlawful background checks on prospective and current employees prior to making a conditional offer. Employee is informed and believes, and based thereon alleges, that Employer violated applicable laws by, without limitation: requiring job applicants and employees to disclose their conviction history before Employer made a conditional offer of employment; inquiring into or considering the conviction history of applicants before Employer made any conditional offers of employment; considering, distributing, or disseminating information about arrests not followed by conviction, referrals to or participation in a pretrial or posttrial diversion program, convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction for which the convicted person has received a full pardon or has been issued a certificate of rehabilitation, while conducting conviction history background checks in connection with any applications for employment; intending to deny an applicant a position of employment solely or in part because of the applicant's conviction history; and asking applicants for employment to disclose, through any written form or verbally, information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of the juvenile court, to the detriment of Employee and other aggrieved employees. As such, Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code section 432.7 and Government Code section 12952, entitling Employee and other aggrieved employees to damages. Employer would also be liable for civil penalties pursuant to Labor Code sections 432.7, 432.8, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of relying on the salary history information of an applicant for employment as a factor in determining whether to offer employment to an applicant or what salary to offer the applicant in violation of Labor Code section 432.3 by including, on Employer's application for employment, an inquiry regarding current and/or former salary history information, including, without limitation, compensation and benefits of the applicant for employment. As such, Employee

is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code section 432.3 entitling Employee and other aggrieved employees to damages. Employer would also be liable for civil penalties pursuant to Labor Code sections 432.3 and 2699.

Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please advise within sixty-five (65) calendar days of the postmarked date of this notice whether the LWDA intends to investigate the violations alleged above. Our office understands that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this PAGA Notice that the LWDA intends to investigate these allegations, Employee may immediately thereafter file a civil complaint against Employer to allege causes of action for civil penalties under the Private Attorney General Act for the herein-described alleged violations of the Labor Code.

Very truly yours,

BIBIYAN LAW GROUP, P.C.

/s/ Jasmin Aradi
Jasmin Aradi

cc: Dick Browing, Inc. (via U.S. Certified Mail, Return Receipt Requested)
Cerritos Dodge, Inc. (via U.S. Certified Mail, Return Receipt Requested)
Victorville Nissan, Inc. (via U.S. Certified Mail, Return Receipt Requested)
High Desert Autos, Inc. (via U.S. Certified Mail, Return Receipt Requested)
DAV, Inc. (via U.S. Certified Mail, Return Receipt Requested)
VAHI, Inc. (via U.S. Certified Mail, Return Receipt Requested)
Auto Square Autos, Inc. (via U.S. Certified Mail, Return Receipt Requested)
Triangle Motors, Inc. (via U.S. Certified Mail, Return Receipt Requested)

EXHIBIT 3



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**Stand out
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A Firm-by-Firm Sampling of Billing Rates Nationwide

The *National Law Journal* asked the respondents to its 2002 survey of the nation's 250 largest law firms to provide hourly billing rate information for partners and associates firmwide. The firms that supplied information -- including some firms that are not in the NLJ 250 -- are listed below in alphabetical order. The number after a firm's name indicates the total number of attorneys at that firm. The city listed below the name of a firm is the location of the firm's principal office or largest office.

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z

A B C D

Akin, Gump, Strauss, Hauer & Feld (1,017)
(Washington, D.C.)
Partners \$350-\$600
Associates \$170-\$330

Alston & Bird (674)
(Atlanta)
Partners \$330-\$575
Associates \$170-\$300

Althelmer & Gray (361)
(Chicago)
Partners \$220-\$325
Associates \$115-\$260

Andrews & Kurth (375)
(Houston)
Partners \$310-\$595
Associates \$170-\$400

Arent Fox Kintner Plotkin & Kahn (249)
(Washington, D.C.)
Partners \$315-\$560
Associates \$165-\$360

Armstrong Teasdale (230)
(St. Louis)
Partners \$210-\$310
Associates \$105-\$240

Artor & Hadden (273)
(Cleveland)
Partners \$215-\$450
Associates \$150-\$285

Baker, Donelson, Bearman & Caldwell (210)
(Memphis, Tenn.)
Partners \$175-\$480
Associates \$110-\$275

Ballard Spahr Andrews & Ingersoll (441)
(Philadelphia)

Kelley Drye & Warren (358)
(New York)
Partners \$300-\$590
Associates \$180-\$375

Kramer Levin Nattalis & Frankel (285)
(New York)
Partners \$440-\$625
Associates \$210-\$440

L M N

Lang Powell Spears Lubertsky (175)
(Seattle)
Partners \$225-\$380
Associates \$170-\$260

Lewis, Rice & Fingersh (170)
(St. Louis)
Partners \$360-\$355
Associates \$120-\$270

Littler Mendelson (395)
(San Francisco)
Partners \$220-\$440
Associates \$135-\$350

Locke Liden & Sapp (408)
(Houston)
Partners \$300-\$595
Associates \$150-\$340

Loeb & Loeb (175)
(Los Angeles)
Partners \$350-\$650
Associates \$185-\$325

Lord, Bissell & Brook (325)
(Chicago)
Partners \$255-\$510
Associates \$140-\$285

Lowenstein Sandler (193)
(Roseland, N.J.)

04/15/11

Partners \$240-\$525
Associates \$145-\$300

Bell, Boyd & Lloyd (226)
(Chicago)
Partners \$250-\$550
Associates \$200-\$275

Blackwell Sanders Peper Martin (301)
(Kansas City, Mo.)
Partners \$165-\$410
Associates \$110-\$210

Blank Rome Comisky & McCawley (398)
(Philadelphia)
Partners \$285-\$565
Associates \$175-\$360

Boutt, Cummings, Connors & Barry (89)
(Nashville, Tenn.)
Partners \$185-\$375
Associates \$135-\$235

Bracewell & Patterson (362)
(Houston)
Partners \$210-\$600
Associates \$125-\$325

Bradley, Arant, Rose & White (181)
(Birmingham, Ala.)
Partners \$205-\$365
Associates \$150-\$275

Brinko Hofer Gilson & Lane (138)
(Chicago)
Partners \$295-\$500
Associates \$165-\$290

Bryan Cave (841)
(St. Louis)
Partners \$225-\$720
Associates \$135-\$410

Buchalter, Nemer, Fields & Younger (137)
(Los Angeles)
Partners \$310-\$450
Associates \$160-\$350

Buchanan Ingersoll (302)
(Pittsburgh)
Partners \$225-\$720
Associates \$135-\$360

Buckingham, Doolittle & Burroughs (135)
(Akron, Ohio)
Partners \$205-\$360
Associates \$135-\$260

Burns, Peano, Swicker & Mathis (37)
(Alexandria, Va.)
Partners \$300-\$550
Associates \$175-\$300

Burr & Forman (169)
(Birmingham, Ala.)
Partners \$205-\$365
Associates \$140-\$225

Butter Long (204)
(Detroit)
Partners \$205-\$380
Associates \$135-\$215

Partners \$285-\$525
Associates \$140-\$295

Lyco, Forward, Hamilton & Scripps (202)
(San Diego)
Partners \$310-\$500
Associates \$150-\$300

Manatt, Phelps & Phillips (244)
(Los Angeles)
Partners \$375-\$600
Associates \$200-\$355

Marshall, Dennehey, Warner, Coleman & Goggin
(288)
(Philadelphia)
Partners \$130-\$255
Associates \$115-\$180

Mathews and Branscomb (51)
(San Antonio)
Partners \$175-\$325
Associates \$125-\$195

McCarter & English (270)
(Newark, N.J.)
Partners \$250-\$495
Associates \$140-\$285

McGuireWoods (558)
(Richmond, Va.)
Partners \$210-\$575
Associates \$85-\$325

Michael Best & Friedrich (349)
(Milwaukee)
Partners \$180-\$425
Associates \$120-\$240

Miller, Canfield, Paddock and Stone (301)
(Detroit)
Partners \$220-\$475
Associates \$125-\$230

Miller & Chevalier (123)
(Washington, D.C.)
Partners \$320-\$650
Associates \$175-\$340

Miller Nash (140)
(Portland, Ore.)
Partners \$210-\$350
Associates \$125-\$225

Neisen Mullins Rife & Scarborough (252)
(Columbia, S.C.)
Partners \$200-\$390
Associates \$145-\$270

Nutter, McClennen & Fish (170)
(Boston)
Partners \$330-\$480
Associates \$175-\$300

O - R

Obermayer Rebmann Maxwell & Hippel (110)
(Philadelphia)
Partners \$300-\$475
Associates \$145-\$325

Ogletree, Deakins, Nash, Smoak & Stewart
(162)

Jenkins & Gilchrist (373)
(Dallas)
Partners \$275-\$525
Associates \$165-\$380

Jenner & Block (390)
(Chicago)
Partners \$350-\$625
Associates \$185-\$350

Jones, Walker, Waechter, Poltavant, Carrère &
Denègre (217)
(New Orleans)
Partners \$170-\$335
Associates \$110-\$185

Womble Carlyle Sandridge & Rice (437)
(Winston-Salem, N.C.)
Partners \$190-\$500
Associates \$125-\$265

Wyatt, Tarrant & Combs (201)
(Louisville, Ky.)
Partners \$150-\$310
Associates \$100-\$190

(The National Law Journal, December 2002)

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EXHIBIT 4

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11 Attorneys for Plaintiffs ROSA CANTU and
12 SANDRA CHU

13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES
15

16 ROSA CANTU AND SANDRA CHU,
individually and on behalf of others similarly
17 situated,

18 Plaintiffs,

19 vs.

20 PACIFIC BELL TELEPHONE COMPANY
d/b/a AT&T CALIFORNIA, and Does 1 through
21 100, inclusive,

22 Defendants.
23
24
25
26
27
28

Case No.: BC441237

CLASS ACTION [Code Civ. Proc. § 382]

REPRESENTATIVE ACTION
[Labor Code § 2698, et seq.]

DECLARATION OF RICHARD M. PEARL
IN SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND AN AWARD
OF REASONABLE ATTORNEYS' FEES
AND COSTS

Date: February 4, 2011
Time: 9:00 a.m.
Dept: 324
Judge: Emilie H. Elias

1 I, Richard M. Pearl, declare:

2 1. I make this Declaration of my own personal knowledge, and if called to testify, I could
3 and would testify competently to the matters stated herein.

4 A. Background

5 2. I am a member in good standing of the California State Bar. I am in private practice as
6 the principal of my own law firm, the Law Offices of Richard M. Pearl. I specialize in issues related to
7 court-awarded attorneys' fees, including the representation of parties in fee litigation and appeals,
8 serving as an expert witness, and serving as a mediator and arbitrator in disputes concerning attorneys'
9 fees and related issues. In this case, I have been asked by Plaintiffs' counsel to express my expert
10 opinion regarding their claim for reasonable attorneys' fees.

11 3. Briefly summarized, my background is as follows: I am a 1969 graduate of Boalt Hall
12 School of Law, University of California, Berkeley, California. After graduation, I spent fourteen years
13 in federally-funded legal services programs before going into private practice in 1982. From 1977 to
14 1982, I was Director of Litigation for California Rural Legal Assistance, Inc., a statewide legal services
15 program with more than fifty attorneys. Since April 1987, I have been a sole practitioner in the San
16 Francisco Bay Area. Martindale Hubbell rates my law firm "AV." I also have been selected as a
17 Northern California "Super Lawyer" in Appellate Law for 2005, 2006, 2007, 2008, and 2010. A copy
18 of my Resume is attached hereto as Exhibit A.

19 4. Since 1982, my practice has been a general civil litigation and appellate practice, with an
20 emphasis on cases and appeals involving court-awarded attorneys' fees. I have lectured and written
21 extensively on court-awarded attorneys' fees. I have been a member of the California State Bar's
22 Attorneys Fees Task Force and have testified before the State Bar Board of Governors and the
23 California Legislature on attorneys' fee issues. I am the author of California Attorney Fee Awards, (3d
24 ed Cal. CEB 2010). I also was the author of California Attorney Fee Awards, 2d Ed. (Calif. Cont. Ed.
25 of Bar 1994), and its 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007,
26 and 2008 Supplements. This treatise has been cited by the California appellate courts on more than 35
27 occasions. I also authored the 1984, 1985, 1987, 1988, 1990, 1991, 1992, and 1993 Supplements to its
28 predecessor, CEB's California Attorney's Fees Award Practice. In addition, I authored a federal

1 manual on attorneys' fees entitled *Attorneys' Fees: A Legal Services Practice Manual*, published by the
2 Legal Services Corporation. I also co-authored the chapter on "Attorney Fees" in Volume 2 of CEB's
3 *Wrongful Employment Termination Practice*, 2d Ed. (1997).

4 5. More than 90% of my practice is devoted to issues involving court-awarded attorney's
5 fees. I have been counsel in over 140 attorneys' fee applications in state and federal courts, primarily
6 representing other attorneys. I also have briefed and argued more than 40 appeals, at least 25 of which
7 have involved attorneys' fees issues. In the past ten or so years, I have successfully handled four cases
8 in the California Supreme Court involving court-awarded attorneys' fees: (1) *Delaney v. Baker* (1999)
9 20 Cal. 4th 23, which held that heightened remedies, including attorneys' fees, are available in suits
10 against nursing homes under California's Elder Abuse Act; (2) *Ketchum v. Moses* (2001) 24 Cal. 4th
11 1122, which held, inter alia, that contingent risk multipliers remain available under California attorney
12 fee law, despite the United States Supreme Court's contrary ruling on federal law (note that in
13 *Ketchum*, I was primary appellate counsel in the Court of Appeal and "second chair" in the Supreme
14 Court); (3) *Flannery v. Prentice* (2001) 26 Cal. 4th 572, which held that in the absence of an agreement
15 to the contrary, statutory attorneys' fees belong to the attorney whose services they are based upon; and
16 (4) *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, which I handled, along with trial counsel,
17 in both the Court of Appeal and Supreme Court. I also successfully represented the plaintiffs in a
18 previous attorneys' fee decision in the Supreme Court, *Maria P. v. Riles* (1987) 43 Cal. 3d 1281, and
19 represented amicus curiae, along with Richard Rothschild, in the Supreme Court's most recent fee
20 decision, *Yasquez v. State of California* (2009) 45 Cal. 4th 243. I also have handled several Ninth
21 Circuit attorneys' fees matters, including *Davis v. City & County of San Francisco* (9th Cir. 1992) 976
22 F.2d 1536, *Mangold v. CPUC* (9th Cir. 1995) 67 F.3d 1470, *Velez v. Wynne* (9th Cir. 2007) 2007 U.S.
23 App. LEXIS 2194, and *Camacho v. Bridgeport Financial, Inc.* (9th Cir. 2008) 523 F.3d 973. See
24 Exhibit A.

25 B. Plaintiffs' Counsel's Rates

26 6. I have been asked by Plaintiffs' counsel to submit this declaration in support of
27 Plaintiffs' Motion for Final Approval of Class Action Settlement and an Award of Reasonable
28 Attorneys' Fees and Costs. I submit this declaration to provide the Court information concerning

2
DECLARATION OF RICHARD M. PEARL IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND AN AWARD OF REASONABLE ATTORNEYS' FEES AND COSTS - CASE NO. BC041237

284747-2

1 hourly rates for attorneys in the San Francisco Bay Area, and in particular to provide information
2 demonstrating that the hourly rates requested by Plaintiffs' counsel in this matter are within the range of
3 market rates being charged in the San Francisco Bay Area and the San Diego market for similar
4 services, i.e. handling and trying complex class actions on behalf of employees against large employers
5 like Pacific Bell Telephone Company in this case.

6 7. I understand that Plaintiffs' counsel are requesting an award of attorneys' fees at the
7 following rates:

8 a. Goldstein Demchak Baller Borgen & Dardarian, Oakland, CA

9

Name	Grad Year	Billing Rate
Roberta L. Steele	1993	\$600
Laura L. Ho	1994	\$600
Joseph E. Jaramillo	1995	\$550
Senior Paralegal		\$195
Paralegal		\$150

10
11
12

13 b. GraceHollis LLP, San Diego, CA

14

Name	Grad Year	Billing Rate
Graham S.P. Hollis	1985	\$600
Marta Manus	2008	\$175
Senior Paralegal		\$170

15
16

17 8. Through my writing and practice, I have become familiar with the non-contingent
18 market rates charged by attorneys in California and elsewhere. This familiarity has been obtained in
19 several ways: (1) by handling attorneys' fee litigation; (2) by discussing fees with other attorneys;
20 (3) by obtaining declarations regarding prevailing market rates in cases in which I represent attorneys
21 seeking fees; and (4) by reviewing attorneys' fee applications and awards in other cases, as well as
22 surveys and articles on attorney's fees in the legal newspapers and treatises.

23 9. The information I have gathered, some of which is summarized below, shows that the
24 rates requested by Plaintiffs' counsel in this case are well in line with the non-contingent market rates
25 charged by litigation attorneys of similar qualifications and experience in San Francisco, San Diego,
26 and similar markets.

27 ///

28 ///

c. Rates found reasonable in other cases.

Set forth below are rates that were awarded by the courts in the following cases:

2010 Rates

(1) *Savaglio, et al. v. WalMart*, Alameda County Superior Court No. C-835687-7, Order Granting Class Counsel's Motion for Attorneys' Fees, filed September 10, 2010, a wage and hour class action, in which the court found the following hourly rates reasonable (before applying a 2.36 multiplier):

Years of Experience	Rate
51	\$875
39	\$750
38	\$600
33	\$775
25	\$550
23	\$650
21	\$625
19	\$610
18	\$600
17	\$585
16	\$570
15	\$560
14	\$550
13	\$525
12	\$515
11	\$510
10	\$505
9	\$500
7	\$460
4	\$435
Law Clerks	\$125-\$260

2009 Rates

(1) *Center for Biological Diversity v. California Fish & Game Commission*, San Francisco Superior Court No. CPF-08-508759, Order Granting Petitioners' Motion for Attorneys' Fees, filed December 1, 2009, in which the court found reasonable the following hourly rates:

Years of Experience	Rate
25	\$650
8	\$375
4	\$250
Law Clerks	\$150

(2) *Kashmiri et al v. Regents of U.C.*, San Francisco Superior Court, Order Granting Plaintiffs' Motion for Common Fund Attorneys' Fees and Expenses, filed September 30, 2008, in which the court found the following rates reasonable, plus a 3.7 lodestar multiplier:

Years of Experience	Rate
40	\$750
22	\$690
14	\$590
7	\$420
4	\$345
2	\$295
Law Clerks	\$200
Paralegals	\$195

(4) *Environmental Law Foundation v. Laidlaw Transit, Inc.*, San Francisco Superior Court No. CGC-06-451832, Order Granting Motion for Court Approval of Parties Joint Stipulated Judgment, filed September 22, 2008, in which the court found the following hourly rates reasonable in a Proposition 65 action, plus a 1.25 multiplier:

Years of Experience	Rate
29	\$750
26	\$700
24	\$700
23	\$650
18	\$650
16	\$625
14	\$600
10	\$560
9	\$495-\$575
8	\$475
7	\$450
6	\$395
4	\$325
2	\$300
1	\$250
Paralegals	\$145-\$175
Interns	\$125

(5) *Gardner v. Schwarzenegger*, Alameda County Superior Court No. RG06-278911, Order After Hearing filed April 20, 2009, aff'd by unpublished opinion, 2010 Cal. App. Unpub. LEXIS 1240, in which the court found the following 2008 rates reasonable, plus a 1.75 multiplier:

Years of Experience	Rate
17	\$640
14	\$590
8	\$445
Paralegal	\$170

a. Rate Information from Surveys and Other Cases:

I have reviewed numerous declarations and depositions filed in other cases, as well as various surveys of legal rates. These include the Westlaw CourtExpress Legal Billing Reports for May, August, and December 2009 (attached hereto as Exhibit B). These sources show the hourly rates for litigation undertaken on a non-contingent basis by the following California law firms, listed in alphabetical order:

Altshuler Berzon LLP

2009 Rates:

Years Experience	Rate
32	\$775
15	\$625
8	\$475
Law Clerks	\$200
Paralegals	\$195

2007 Rates:

Years Experience	Rate
23	\$700
15	\$550
5	\$325
Paralegals	\$155-\$190

Cooley Godward Kronish LLP

2008 Rates:

Years Experience	Rate
Partners	\$525-\$980
Associates	\$285-\$570

2007 Rates:

Years Experience	Rate
Partners	\$470-\$875 (average \$673)
Associates	\$250-\$555 (average \$403)

Coughlin Stoia Geller Rudman & Robbins, LLP

2007 Rates:

Years Experience	Rate
42	\$700
19	\$650
14	\$650
14	\$600
13	\$585
11	\$510
6	\$460
5	\$285

Duane Morris LLP

2009 Rates:

Years Experience	Rate
Partners	\$325-\$795
Associates	\$225-\$450

Epstein Becker & Green LLP

2009 Rates:

Years Experience	Rate
Partners	\$350-\$855
Associates	\$180-\$475

Fenwick & West

2007 Rates:

Years Experience	Rate
Partners	\$500-\$775 (average \$590)
Associates	\$245-\$500 (average \$370)

Hadsell Stormer

2009 Rates:

Years Experience	Rate
35	\$775
20	\$575

11/15/11

Howard, Rice, Nemerovski, Canady, Falk & Rabkin

2008 Rates:

Years Experience	Rate
Partners	\$515-\$795
Associates	\$275-\$510

2007 Rates:

Years Experience	Rate
Partners	\$495-\$775
Associates	\$275-\$485

Litt, Estuar, Harrison & Kitson, LLP

2009 Rates:

Years Experience	Rate
39	\$800
16	\$550
3	\$320
2	\$285
Paralegals	\$125-\$235
Law Clerks	\$225

Loeb & Loeb

2009 Rates:

Years Experience	Rate
Partners	\$475-\$950
Associates	\$285-\$450

2008 Rates:

Years Experience	Rate
Partners	\$450-\$925
Associates	\$260-\$500

2007 Rates:

Years Experience	Rate
Partners	\$475-\$875 (average \$600)
Associates	\$240-\$500 (average \$400)

Manatt, Phelps & Phillips

2009 Rates:

Years Experience	Rate
Partners	\$495-\$850
Associates	\$250-\$505

2008 Rates:

Years Experience	Rate
Partners	\$495-\$850
Associates	\$290-\$505

2007 Rates:

Years Experience	Rate
Partners	\$520-\$785 (average \$600)
Associates	\$265-\$480 (average \$395)

Morrison Foerster

2009 Rates:

Years Experience	Rate
24	\$750

2008 Rates:

Years Experience	Rate
45	\$675
36	\$725
33	\$785
14	\$650
12	\$600
9	\$560
7	\$535
5	\$485
1	\$520
Paralegals	\$185-\$230

2007 Rates:

Years Experience	Rate
44	\$675
11	\$550
8	\$520
6	\$475
3	\$250

O'Melveny & Myers

2009 Rates:

Years Experience	Rate
36-37	\$860-\$950
21	\$820
16-18	\$700-\$710
14	\$595-\$675
10	\$590
8	\$565
7	\$540-\$565
5-6	\$480-\$520
2-4	\$395-\$450
Paralegals	\$225-\$310

Reed Smith

2008 Rates:

Years Experience	Rate
Partners	\$375-\$900 (average \$626)
Associates	\$235-\$580 (average \$423)

2007 Rates:

Years Experience	Rate
Partners	\$350-\$825 (average \$558)
Associates	\$200-\$510 (average \$374)

Rudy, Exelrod & Zieff

2009 Rates:

Years Experience	Rate
Partners	
31	\$700
Associates	
3	\$305

2007 Rates:

Years Experience	Rate
Partners	
29	\$700
12	\$500
Associates	
10	\$400
8	\$330
Law Clerk	\$200
Paralegal	\$150

Schoubrun, DeSimone, Seplow, Harris & Hoffman

2009 Rates:

Years Experience	Rate
33	\$750
25	\$625
24	\$625
8	\$375
6	\$370
Paralegals	\$125

Sheppard, Mullin, Richter & Hampton

2008 Rates:

Years Experience	Rate
Partners	\$475-\$795
Associates	\$275-\$455

2007 Rates:

Years Experience	Rate
Partners	\$425-\$795
Associates	\$260-\$550

Townsend and Townsend and Crew

2009 Rates:

Years Experience	Rate
Partners	\$480-\$750
Associates	\$260-\$460

Winston & Strawn

2009 Rates:

Years Experience	Rate
Partners	\$400-\$995
Associates	\$210-\$670

10. The hourly rates set forth above pertain largely to law firms headquartered in the San Francisco Bay Area and Los Angeles. To the extent those law firms handle cases in other jurisdictions, like San Diego, they almost always charge the same rates that they do for litigation in the Bay Area. To the extent Plaintiffs' claim is based upon San Diego rates, however, I also am of the opinion that they are in line with the rates charged by lawyers of comparable skill, experience, and reputation for comparable work, *i.e.*, complex representative litigation in San Diego. I base that opinion on the following facts:

a. In a report filed with the California Public Utilities Commission (attached as Exhibit C), the San Diego Gas & Electric Co. reported that in 2003, it hired outside counsel at rates of from \$477-625 per hour for partners with 13 or more years experience, \$435 per hour for partners with 8-12 years of practice, and \$239-425 per hour for associate attorneys with up to 7 years of practice. Hourly rates have increased significantly since then.

b. San Diego law firm Luce, Forward, Hamilton & Scripps reports that in 2010, its partner rates ranged from \$350 to \$670 per hour, and its associate rates ranged from \$245 to \$445 per hour. In 2009, its partner rates ranged from \$360 to \$650 per hour, and its associate rates ranged from \$240 to \$540 per hour.

11. My research regarding attorneys' fees in California has indicated a consistent increase in fees over the last several years. Most firms increased their rates over these periods. Consistent with this market, I raised my rates in 2009 and 2010, and will raise it again in 2011, to reflect both the

1 demand for my services and inflation in costs and legal rates; my rate is still significantly less than
2 many attorneys with comparable experience, expertise, and skills at other firms.

3 12. The hourly rates set forth above are those charged where full payment is expected
4 promptly upon the rendition of the billing and without consideration of factors other than hours and
5 rates. If any substantial part of the payment were to be deferred for any substantial period of time, for
6 example, or if payment were to be contingent upon outcome or any other factor, the fee arrangement
7 would be adjusted accordingly to compensate the attorneys for those factors.

8 13. In my experience, fee awards are almost always determined based on current rates, i.e.,
9 the attorney's rate at the time a motion for fees is made, rather than the historical rate at the time the
10 work was performed. This is a common and accepted practice to compensate attorneys for the delay in
11 being paid.

12 C. Plaintiffs' Counsel's Requested Percentage Fee

13 14. I understand that Plaintiffs request an award of fees under the common fund doctrine as a
14 percentage of the fund recovered in this litigation sufficient to provide them with a reasonable fee. This
15 is an appropriate request because this is a fully-paid, non-reversionary settlement in which the value of
16 the class recovery is fully monetized at \$2,000,000, inclusive of fees, expenses, and settlement
17 administration costs. Under these circumstances, courts award fees as percentages of the common fund
18 where they are in line with the range of fees freely negotiated in the legal marketplace in comparable
19 litigation.

20 15. Based on the information I have gathered and my own experience and expertise, it is my
21 opinion that the 33 1/3% common fund fee recovery requested by Class Counsel is, in the
22 circumstances of this case, reasonable and consistent with awards approved by other California state
23 courts reviewing class action settlements, based on the factors discussed below.

24 16. My opinion is based in part on the fact that, as a common fund case with the fund
25 consisting of \$2 million, Plaintiffs' claimed fee of 33 1/3% is entirely consistent with the legal
26 marketplace for attorneys' services in contingency fee cases involving similar financial recoveries. In
27 the course of my practice, I have become familiar with the contingency fee percentages charged by law
28 firms to sophisticated institutional clients in large damage cases. Based on that knowledge and my

13
DECLARATION OF RICHARD M. PEARL IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND AN AWARD OF REASONABLE ATTORNEYS' FEES AND COSTS - CASE NO.: BCW137

234747-2

1 experience in the attorneys' fees field generally, it is my opinion that if competent and experienced
2 attorneys and a sophisticated client were to negotiate a contingency fee agreement under the
3 circumstances where (a) a high risk, complex case was being contemplated, (b) it is anticipated that the
4 opposition would be vigorous, and (c) the attorneys would not be paid unless and until they were able to
5 obtain significant relief for the client, the sophisticated client would be more than willing to enter into a
6 retainer agreement under which the client would pay only the litigation out-of-pocket costs, and the
7 attorneys could reasonably expect to recover 5% to 35% of the total value of any recovery as fees.

8 17. An award of 33 1/3% of the common fund requested by Class Counsel here is consistent
9 with legal marketplace for attorneys' services in contingency fee cases because of (a) the high risk
10 involved in litigating an incentive compensation plan case on behalf of nearly 100 California
11 employees; (b) the vigorous defense presented by the large defense firm that represents Defendant here;
12 (c) the relatively small size of the common fund, which weighs toward a higher percentage; and (d) the
13 fact that here, unlike in the paradigm market practices situation described in the previous paragraph,
14 Class Counsel were obligated to advance the substantial litigation costs on a contingent basis with risk
15 of delay in repayment as well as possible non-repayment, and to represent Plaintiffs through appeal of
16 any judgment in this case. This award would also be appropriate to encourage settlement, reward
17 counsel for maximizing their clients' recoveries, and promote the private enforcement of the wage and
18 hour laws Plaintiffs allege were violated.

19 D. Plaintiffs' Counsel's Lodestar Multiplier

20 18. Courts often cross-check a percentage-based fee against a lodestar based fee to determine
21 if it is reasonable. I understand that Plaintiffs' lodestar here is \$332,383.88 on non-fees work. The
22 \$666,667 fee award requested represents a 2 multiplier on the non-fees lodestar.

23 19. The expense and risk of public interest litigation has not diminished over the years; to
24 the contrary, these cases are in many ways more difficult than ever. As a result, fewer and fewer
25 attorneys and firms are willing to take on such litigation, and the few who are willing to do so can only
26 continue if their fee awards reflect true market value. Attorneys who litigate on a wholly or partially
27 contingent basis expect to receive significantly higher effective hourly rates in cases where
28 compensation is contingent on success. As the case law recognizes, this does not result in any

1 "windfall" or undue "bonus." In the legal marketplace, a lawyer who assumes a significant financial
2 risk on behalf of a client rightfully expects that his or her compensation will be significantly greater
3 than if no risk was involved (i.e., if the client paid the bill on a monthly basis), and that the greater the
4 risk, the greater the "enhancement." Adjusting court-awarded fees upward in contingent fee cases to
5 reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor simply makes
6 them competitive in the legal marketplace, helping to ensure that meritorious cases will be brought to
7 enforce important public interest policies and that clients who have meritorious claims will be more
8 likely to obtain qualified counsel.

9 20. In my experience, lodestar multipliers of 2 to 4 are typical for class actions such as this
10 case. Plaintiffs' requested fee falls well within this range.

11 **E. Plaintiffs' Counsel's Out-of-Pocket Expenses.**

12 21. I have reviewed the billing practices of hundreds of attorneys in California. Based on
13 my experience and knowledge of these billing practices, I am aware that it is a common practice for
14 firms to bill their clients for out-of-pocket expenses incurred in litigation on a monthly basis as they are
15 incurred. Such expenses include, but are not limited to, charges incurred for copying, long-distance
16 telephone calls, postage, messengers, travel, deposition and hearing transcripts, legal and non-legal
17 computer research services, mediation services, and expert witnesses. I am informed that Plaintiffs
18 expended \$16,258.08 in out-of-pocket litigation expenses in this case, including \$8,000 for the services
19 of an experienced and skilled mediator, David Rotman, who brokered the settlement in this case. Based
20 on my knowledge and experience of such costs and billing practices, it is my opinion that these
21 expenses are reasonable given the complex nature of this case.

22 If called as a witness, I could and would competently testify from my personal knowledge to the
23 facts stated herein. I declare under penalty of perjury under the laws of the state of California the
24 foregoing is true and correct.

25 Executed this 4th day of January, 2011, at Berkeley, California.

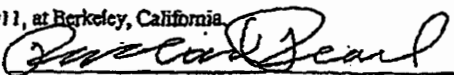
26 
27 RICHARD M. PEARL
28

EXHIBIT 5