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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

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| JOEL SANCHEZ, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;<br><br>Plaintiff,<br><br>vs.<br><br>RALLY AUTO GROUP, INC., a California corporation; and DOES 1 through 100, inclusive,<br><br>Defendant. | Case No. 21STCV29625<br><br>Honorable Kenneth R. Freeman<br>Department 14<br><br>**CLASS ACTION**<br><br>**DECLARATION OF ELIZABETH PARKER-FAWLEY IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**<br><br>Date: May 1, 2025<br>Time: 10:00 a.m.<br>Department: 14<br><br>Complaint Filed: August 11, 2021<br>FAC Filed: June 25, 2024<br>Trial Date: None Set |

## DECLARATION OF ELIZABETH PARKER-FAWLEY

I, Elizabeth Parker-Fawley**,** hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiff Joel Sanchez ("Plaintiff"). The facts set forth in this declaration are within my personal knowledge or based on information and belief and, if called as a witness, I could and would competently testify thereto.

**LITIGATION AND REPRESENTATIVE AND CLASS ACTION EXPERIENCE**

2. For over a decade, Lawyers *for* Justice, PC has almost exclusively focused on the prosecution of consumer and employment representatives and class actions, involving wage-and-hour claims, race discrimination, unfair business practices, or consumer fraud. Currently, Lawyers *for* Justice, PC is the attorney of record in dozens of employment-related putative class actions and representative actions in both state and federal courts in the State of California. Lawyers *for* Justice, PC has successfully litigated cases involving the executive, administrative, and other overtime exemptions to the State of California and federal overtime compensation requirements. During a relatively short time, in association with other law firms, Lawyers *for* Justice, PC has recovered millions of dollars on behalf of thousands of individuals in California.

3. Edwin Aiwazian is a Managing Member and Shareholder of Lawyers *for* Justice, PC. He received his Bachelor of Arts degree from Pepperdine University in April of 1999 and earned a Juris Doctor degree from Pepperdine University School of Law in May of 2004. He has extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, he has previously served as a pro bono mediator for the Los Angeles County Superior Court. In October of 2000, he obtained a Litigation Paralegal Certificate from the UCLA Extension Program. During the summer of 2000, he studied Legal Writing at Harvard University. From approximately September 2002 to approximately December 2002, he served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the United States Court of Appeals for the Ninth Circuit. From approximately June 2002 to approximately August 2002, he served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second

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Appellate District. In December of 2004, he obtained a license to practice law from the California State Bar. For over a decade, through his work at Lawyers *for* Justice, PC, he has almost exclusively focused on the prosecution of consumer and employment class actions. While employed by Lawyers *for* Justice PC, he has argued over one hundred (100) motions, taken or defended over one hundred fifty (150) depositions, prepared dozens of expert witnesses for deposition or trial, and attended over one hundred seventy-five (175) mediations. Together with other attorneys at the firm, and in some cases in conjunction with co-counsel, he has successfully litigated cases involving the executive, administrative, and other overtime exemptions to the State of California and federal overtime compensation requirements. Under his supervision, Lawyers *for* Justice, PC has successfully obtained class certification by contested motion practice in approximately fifteen (15) cases in the last decade and litigated over 1,000 class action or representative action cases.

4. Arby Aiwazian is a Member and Shareholder of Lawyers *for* Justice, PC. He received his Bachelor of Arts degree from University of California, Los Angeles and graduated magna cum laude. He earned a Juris Doctor degree, cum laude, from Southwestern Law School. From approximately May 2007 to approximately July 2007, he served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second Appellate District. From approximately August 2008 to approximately December 2008, he served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the United State Court of Appeals for the Ninth Circuit. He was admitted to practice law in California in 2010. He is admitted to practice before all courts of the State of California and all United States District Courts in the State of California. He has worked on many wage-and-hour class action and representative action cases, taking the lead in taking and defending depositions, arguing motions, and attending mediations. He has played an integral role in preparing matters for class certification, including and not limited to, successful certification of a class in *Upson v. Sur La Table* (Los Angeles County Superior Court Case No. BC424012), *Montazemi v. Regus Management* (Los Angeles County Superior Court Case No. BC478769), and *Abdulhaqq v. Urban Outfitters* (Alameda County Superior Court Case No. RG13680477). Under his supervision, dozens of class action or

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representative cases have resulted in settlements that have been granted court approval, including and not limited to, those listed in paragraph 6 herein. He has handled over one hundred and fifty (150) mediations and worked on over two hundred and fifty (250) class action or representative action cases which have resulted in settlement.

5. Joanna Ghosh is a Managing Member of Lawyers *for* Justice, PC. She received a Bachelor of Arts degree from California State University, Los Angeles in 2006, a Master of Science degree from the London School of Economics in 2007, and a Juris Doctor degree from Georgetown University Law Center in 2010. She is admitted to practice in California (since 2010) and in New York (since 2013), and she is admitted to practice in all U.S. District Courts in California, the U.S. Bankruptcy Court for the Central District of California, and the U.S. Supreme Court. She has taken and defended dozens of depositions and successfully handled motion practice in class action cases regarding discovery (including and not limited to, regarding class contact information), class certification (both contested class certification and stipulated class certification), arbitration agreements, coordination, and intervention. She has successfully handled briefing and oral argument on appeal and obtained notable decisions regarding the Private Attorneys General Act and employer efforts to compel arbitration, e.g., *Betancourt v. Prudential Overall Supply*, 9 Cal.App.5th 439 (Cal. Ct. App., Mar. 7, 2017), cert. denied (Cal., May 24, 2017), cert. denied (U.S., Dec. 11, 2017) and *ZB, N.A. v. Superior Court*, 8 Cal.5th175 (2019). She has significant experience with class actions, including and not limited to working on cases to obtain class certification through contested motion practice and working on cases in the post-certification stage (e.g., post-certification discovery, appeal, statistical sampling and pilot study, and trial preparation in conjunction with co-counsel in a case involving a certified class consisting of approximately 2,600 individuals). She also has extensive experience with class action and/or representative action settlements, and she has handled this process in over three hundred (300) cases. Under her, Edwin Aiwazian and Arby Aiwazian, Lawyers *for* Justice, PC has handled the class certification and court approval process for hundreds of class action and/or representative action matters that have successfully resolved. She is a member of the California Employment Lawyers Association.

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6. I am the Director of Legal Operations at Lawyers for Justice, PC. I earned my Bachelor of Arts in History at Chapman University in 2011 and my Juris Doctor from the UCLA School of Law in 2014. In December 2014, I obtained a license to practice law from the California State Bar. I am admitted to practice in all courts in the State of California, as well as the Central, Southern, Northern, and Eastern District Courts of California and the Ninth Circuit Court of Appeal. Since December 2014, I have worked at Lawyers for Justice, PC, and my practice has almost exclusively focused on the prosecution of employment class actions and representative actions, handling cases in all stages of litigation from initial pleadings to assisting with class action trial matters, attending mediations, and preparing class action settlements. Previously, I was in the role of Manager of Litigation, in which I oversaw approximately twenty-five attorneys working on hundreds of employment class actions and representative actions and provided internal training for our litigation practice group and post-bar law clerks. In my current role, I oversee the legal operations of the firm, review and advise attorneys on work product and practices, provide training, and supervise cases from their inception to final accounting. I am a member of the California Lawyers Association Labor & Employment Group and the California Employment Lawyers Association.

**THE SETTLEMENT REACHED IN THE ACTION**

8. Marked and attached hereto as "**EXHIBIT 1**" is a true and correct copy of the fully executed Class Action and PAGA Settlement Agreement ("Agreement") entered into by and between Plaintiff Joel Sanchez, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Rally Auto Group, Inc. ("Defendant"), on the other hand (together, the "Parties"). The Parties and their counsel have approved the proposed Notice of Class Action Settlement ("Class Notice"), which is attached to the Agreement as "<u>Exhibit A</u>," and respectfully request that the Court approve it as well.

9. Based on information provided by Defendant, as of September 20, 2024, the Class is estimated to consist of approximately 620 individuals.

10. The effectiveness of Lawyers *for* Justice, PC ("Class Counsel") in prosecuting this matter has translated into tangible monetary benefits in the following respects: (1)





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Participating Class Members, the State of California, and Aggrieved Employees recover over a reasonably short period of time as opposed to waiting additional years for the same, or possibly worse, result; (2) a guaranteed result that compares favorably with other similar complex wage-and-hour class action and/or representative action settlements of this type, given the strengths and weaknesses of the case; and (3) significant savings in attorneys' fees and/or costs that would have only increased substantially had the case progressed through certification, trial, and/or appeals.

11. Class Counsel has litigated the case for over three years and was actively preparing the matter for class certification and trial. The Parties have engaged in extensive settlement negotiations and participated in a formal, full-day mediation on May 3, 2023, conducted by the late Jeffrey Krivis, Esq., a well-respected mediator experienced in mediating complex labor and employment matters. Prior to and during the mediation and settlement discussions, the Parties exchanged extensive information and engaged in discussions regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, regular rate of pay, PAGA representative actions, arbitration agreements, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things. During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position. Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about its ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial. After conducting extensive investigations, informal discovery, exchange of information, and extensive settlement negotiations, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation. The Agreement is a fair, reasonable, and adequate resolution of the Released Class Claims of Plaintiff and Participating Class Members, and of the Released PAGA Claims of the Aggrieved

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Employees and the State of California, against the Released Parties.

12. Prior to reaching the Agreement, Class Counsel investigated the veracity, strength, and scope of the claims, and were preparing the matter for class certification and trial. Class Counsel conducted significant investigation and informal discovery regarding the facts of the cases, including and not limited to, the exchange, review, and analysis of a large volume of information, documents, and data obtained from Defendant, Plaintiff, and other sources. The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Defendant's Employee Handbook and relevant wage and hour policies, Certificate of Training Completion, Employee Separation Form, Signed Employee Warning Reports, Signed Arbitration Agreements, time and pay records for Plaintiff and a random sampling of Class Members, as well as information and documents concerning the claims set forth in the Litigation, including but not limited to, datapoints, including and not limited to, information regarding the number of Class Members and Aggrieved Employees, the number of workweeks worked by the Class Members, the number of pay periods worked by the Aggrieved Employees, and the average rate of pay of the Class members, among other data. Class Counsel had the opportunity to interview Plaintiff and other Class Members to gather facts and to identify potential witnesses. Counsel for the Parties met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, potential motion practice, informal discovery, and the production of documents and data prior to the mediation. Class Counsel also drafted Plaintiff's pleading and mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.

13. Counsel for the Parties have also invested time researching and investigating the applicable law, which is constantly evolving as it relates to certification, representative PAGA claims, off-the-clock theory, meal and rest periods, regular rate of pay, arbitration agreements, wage-and-hour law and enforcement, Plaintiff's claims and damages, and Defendant's defenses thereto, as well as facts discovered. Based on Class Counsel's analysis, the result achieved in this litigation is fair, adequate, and reasonable.

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14. The Agreement provides for a Total Settlement Amount of $600,000.00. The Net Settlement Amount is the Total Settlement Amount less the following amounts, subject to approval by the Court: Attorneys' Fees and Costs to Class Counsel, Enhancement Award to Plaintiff, Administration Costs to the Administrator, and the PAGA Penalty Amount to the LWDA and Aggrieved Employees. Assuming that the amounts allocated under the Agreement toward these payments are awarded by the Court, the Net Settlement Amount that will be available for distribution to the Participating Class Members is currently estimated to be $263,250.00. Additionally, 75% of the PAGA Penalty Amount (i.e., the LWDA Payment), which is $56,250.00, will be distributed to the Labor and Workforce Development Agency ("LWDA") and 25% of the PAGA Penalty Amount, which is $18,750.00, will be distributed to Aggrieved Employees on a *pro rata* basis, based on PAGA Pay Periods during the PAGA Period (i.e., Individual PAGA Payment). The Net Settlement Amount will be fully distributed in accordance with the terms of the Agreement, and there is no reversion to Defendant.

15. The Parties have agreed to retain ILYM Group, Inc. ("ILYM" or "Administrator") to handle the notice and settlement administration process. The Parties respectfully request that the Court appoint ILYM to handle these procedures and serve as the Administrator. Defendant will provide the Administrator with a list of Class Members that Defendant will compile from their records, which will include each Class Member's full name, last-known mailing address, Social Security number, and hire and termination dates reflecting the number of Class Period Workweeks and PAGA Pay Periods. The Administrator will calculate each Class Member's estimated *pro rata* share of the Net Settlement Amount ("Individual Settlement Payment") and each Aggrieved Employee's estimated *pro rata* share of the 25% portion of the PAGA Penalty Amount ("Individual PAGA Payment"). The Administrator will be responsible for the following: printing, distributing, and tracking Class Notices and other documents for this settlement; calculating and distributing payments due under the Agreement, issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances; providing necessary reports and declarations; and other duties and responsibilities as set forth in the Agreement.

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Administration Costs are currently estimated not to exceed $11,750.00 and will be paid out of the Total Settlement Amount, subject to approval of the Court.

16. Based on investigation and information discovered, Class Counsel believes that there is sufficient evidence to support the allegations made in the lawsuit, including the allegations that Defendant, with respect to Plaintiff and the Class Members, *inter alia*, failed to properly pay overtime wages, failed to provide compliant meal and rest periods and to pay associated premiums, failed to timely pay minimum wages during employment, failed to pay all wages owed upon termination of employment, failed to timely pay wages during employment, failed to provide compliant wage statements, failed to maintain requisite payroll records, and failed to reimburse all necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq*. and conduct giving rise to penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.). Plaintiff also asserted that he and the other Class Members and Aggrieved Employees were expected to perform similar job duties and were subject to the same or similar operations and employment policies, practices, and procedures. Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff, the Class Members, and Aggrieved Employees were substantially the same during the time period at issue. As a result of the alleged uniform practices, Plaintiff claims that he and the Class Members and Aggrieved Employees were uniformly not paid all compensation due to them from Defendant during the time period at issue. Thus, in Class Counsel's view, it is clear that the outcome of this litigation would be determined by Defendant's uniform operations and employment practices, policies, and procedures that Plaintiff alleges applied across its hourly-paid or non-exempt employees in California during the relevant time period.

17. Class Counsel is aware of the defenses and position of Defendant but believes that Plaintiff could potentially obtain class certification despite many obstacles. Class Counsel has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation, including those involved in class certification and/or representative adjudication. Class Counsel further recognizes the burdens of proof

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necessary to establish liability, Defendant's defenses, and the difficulties in establishing entitlement to monetary recovery. Class Counsel has also considered the Parties' settlement discussions, as well as the evaluations of the mediator, who is experienced and well-regarded in complex labor and employment matters.

18. Defendant, on the other hand, denied and continues to deny any liability and wrongdoing of any kind associated with the claims alleged in the lawsuit, and further deny that the lawsuit is appropriate for class treatment or representative adjudication for any purpose other than this Settlement. Defendant believes that it would ultimately succeed in the matter. Both sides have also had the opportunity to conduct investigations and gather documents and information relating to Plaintiff's, Class Members', and Aggrieved Employees' employment with Defendant, and Defendant's operations and employment policies, practices, and procedures. Counsel for the Parties also reviewed and analyzed a large volume of information, documents and data, including but not limited to a sampling of Class Members' time and pay records, to determine the potential value and strength of the claims. The available information enabled Class Counsel to assess the value of the class and PAGA claims and prepare violation, damages, and penalties analyses and models. Accordingly, counsel for the Parties have conducted adequate investigation and discovery to be sufficiently informed of the nature and extent of the class and PAGA claims, and to enable both sides to fully evaluate the Agreement for its fairness, adequacy, and reasonableness. The Agreement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.

19. The Agreement provides for Class Counsel to apply for attorneys' fees in an amount up to 35% of the Total Settlement Amount (i.e., $210,000.00), and reimbursement of actual litigation costs and expenses associated with Class Counsel's litigation of the Settled Actions, which will be paid out of the Total Settlement Amount, subject to approval by the Court. It should be noted that Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.

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20. The Agreement provides for payment of up to $10,000.000 to Plaintiff as an Enhancement Award to be paid out of the Total Settlement Amount subject to approval by the Court. Plaintiff spent considerable time and effort to produce relevant documents and past employment records and to provide the facts and evidence necessary to attempt to prove the allegations. Plaintiff was available whenever Class Counsel needed him and actively tried to obtain information that would facilitate the prosecution of this matter. Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Award, in addition to an Individual Settlement Payment and Individual PAGA Payment, for services performed in this matter on behalf of the Class, State of California, and Aggrieved Employees.

## ESTIMATE OF THE VALUE OF THE CLAIMS

21. Plaintiff contends that Defendant required putative class members to perform work duties off-the-clock (before clocking-in and after clocking-out of their scheduled shifts and during meal and rest periods). Plaintiff also contends that meal and rest periods were regularly missed, later, shortened, and/or interrupted, that putative class members were required to remain on premises during rest breaks, readily available to assist with work tasks, and that Defendant failed to properly pay premiums for all non-compliant meal and rest periods. Additionally, Plaintiff alleged that Defendant intentionally and willfully failed to pay Plaintiff and putative class members all wages due to them while they were employed by Defendant, within the time period permissible under California law, and that Defendant failed to pay all wages due upon termination, within the time period permissible under California law, thereby triggering waiting-time penalties under California Labor Code section 203. Plaintiff contended that, based on the violations described herein, the wage statements provided by Defendant and the payroll records kept by Defendant were inaccurate. Finally, Plaintiff contended that Defendant failed to reimburse Plaintiff and the other putative class members for necessary business expenses, including, but not limited to, the costs associated with the usage of personal cell phones for work duties, the use of steel-toed work boots and tools.

22. Class Counsel considered defense arguments, e.g., that the employer's practices, policies, and procedures complied with the law, that Defendant obtained purported arbitration

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agreements from a significant portion of the Class, that Defendant paid putative class members over the California minimum wage for all hours worked, that Defendant correctly paid overtime for all overtime hours worked, that no waiting-time penalties were due because waiting-time penalties only arise from "willful" failure to pay wages due and owing at the time of termination or resignation, that Plaintiff and putative class members suffered no actual injury from the alleged wage statement violations and that this alleged violation and the alleged recordkeeping violation are entirely derivative of the other causes of action, and that a policy and practice of reimbursing employees for necessary business-related expenses exists. Class Counsel also conducted a meal analysis, and it was observed that 94.54% of shifts analyzed were eligible for a meal period, of which approximately 19.31% had a recorded meal period violation and approximately 80.69% did not have a recorded violation (with approximately 24.50% of shifts eligible for a meal period, showing a precise 30-minute or 60-minute recorded meal period). Class Counsel also considered the likelihood of Plaintiff's success in establishing that any of provisions of the California Labor Code, on which the civil penalties under PAGA and the UCL claim are predicated, were violated and that such violations were injurious and/or warranted imposition of civil penalties. Class Counsel also considered that trial courts have wide discretion when assessing penalties under PAGA, and that it could be determined that individual liability issues predominate (e.g., due to purported variation in shifts, locations, job duties, and other circumstances which could raise individualized questions of fact) and could pose challenges to certification, manageability, and the merits of Plaintiff's claims.

23. Class Counsel considered information, data, and documents obtained from Plaintiff, Defendant, and other sources, and created violation, damages, and penalties valuations and models prior to reaching the Settlement. Based thereon, Plaintiff calculated the potential value of the claims. However, the potential value of each claim assumed an exposure based on the above-captioned action having been certified and Plaintiff having proven all elements of the claims and entitlement to monetary recovery in the above-captioned action (on a class-wide and a representative basis), despite risks associated with obtaining and maintaining certification and demonstrating manageability, risks to establishing liability and any underlying California Labor

Code and IWC Wage Order violations and damages, and significant additional costs that would have to be incurred in order to certify the above captioned action and establish liability, damages, and penalties amounts in the cases. Plaintiff faced the risk of the Court finding that individualized issues predominate, such that the cases are not suitable for class treatment. While Class Counsel disagreed with Defendant's arguments and factual contentions, Class Counsel recognized the circumstances and realities of the cases, applicable case law and regulations, the extensive time and pay records produced by Defendant, the costs and expenses of further litigation and certification, and risks to recovery, and applied appropriate discounts for them. Further, Plaintiff's counsel considered the additional costs and expense of enforcing and collecting on any judgment on behalf of the Class and Aggrieved Employees due to Defendant's financial condition.

24. Based on data provided by Defendant and extrapolated by Plaintiff, the total number of putative class members during the period from August 11, 2017 to April 24, 2024, the Class is estimated to be approximately 620 individuals who worked a total of 42,981 workweeks with an average hourly rate of pay of $13.52. Counsel calculated the potential and realistic values of each claim as follows:

a. <u>Failure to Pay Overtime Wages</u>: The potential value of this claim was estimated to be $1,739,658.96 (42,891 workweeks x 2 hours of unpaid overtime wages x overtime hourly rate of $20.28, which is based on the average hourly rate of $13.52). At this juncture, a discount of 55% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $782,846.53), a discount of 70% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $234,853.96), and a discount of 70% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $70,456.19).

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b. Failure to Pay Minimum Wages: The potential value of this claim was estimated to be $579,886.32 (42,891 workweeks x 1 hour of unpaid minimum wages x average hourly rate of $13.52). At this juncture, a discount of 60% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $231,954.53), a discount of 70% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $69,586.36), and a discount of 75% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $17,396.59).

c. Failure to Provide Compliant Meal Periods and Associated Premiums: The potential value of this claim was estimated to be $579,886.32 (42,891 workweeks x 1 meal period premium x average hourly rate of $13.52). At this juncture, a discount of 65% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $202,960.21), a discount of 70% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $60,888.06), and a discount of 75% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $15,222.02).

d. Failure to Provide Compliant Rest Periods and Associated Premiums: The potential value of this claim was estimated to be $1,159,772.64 (42,891 workweeks x 2 rest period premiums x average hourly rate of $13.52). At this juncture, a discount of 65% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $405,920.42), a discount of 70% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $121,776.13), and a discount of 75% was applied to

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account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $30,444.03).

e. Failure to Timely Pay Wages During Employment: The value of this claim is considered as a part of the valuation of the PAGA claim contained *infra*.

f. Failure to Timely Pay Wages After Termination (and Waiting-Time Penalties): Based on information and data provided by Defendant, it was estimated that approximately 472 putative class members had been terminated during the three-year statute of limitations (i.e., from August 11, 2018). Assuming that these individuals were not timely paid all wages due to them upon termination, the potential value of waiting-time penalties was estimated to be $1,531,545.60 collectively (472 individuals x [30 days x hourly rate of $13.52 x 8 hours]), or approximately $3,244.80 per individual. At this juncture, a discount of 60% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $612,618.24), a discount of 70% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $183,785.47), and a discount of 75% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $45,946.37).

g. Failure to Provide Compliant Wage Statements: The potential value of this claim was calculated to be $796,550.00 ([333 initial violations x $50 statutory penalty] + [7,799 subsequent violations x $100 statutory penalty]). At this juncture, a discount of 60% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $318,620.00), a discount of 70% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $95,586.00), and a discount of 75% was applied to account for the risks associated with proving the extent of damages and obtaining an award

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thereof (bringing the value of this claim closer to $23,896.50).

h. Failure to Maintain Payroll Records: Arguably, civil penalties would only be recoverable by the Labor Commissioner, therefore, the value of this claim is considered as a part of the valuation of the PAGA claim contained *infra*.

i. Failure to Reimburse Necessary Business Expenses: The potential value of this claim was estimated to be $300,237.00 (42,891 workweeks x $7.00 unreimbursed business expenses). At this juncture, a discount of 60% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $120,094.80), a discount of 70% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $36,028.44), and a discount of 75% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $9,007.11).

j. PAGA Penalties: The amount of civil penalties at issue, which the Court could determine whether or not to assess and whether or not to reduce based on the facts and circumstances of the case (to avoid an award that is unjust, arbitrary and oppressive, or confiscatory, pursuant to California Labor Code section 2699(e)(2)), were estimated to be approximately $516,150.00 (333 aggrieved employees estimated to have worked during one-year statutory period x $1,550 civil penalties). At this juncture, a discount of 25% was applied to account for the risks associated with possible bifurcation of discovery and/or trial (bringing the value of this claim closer to $387,112.50), a discount of 55% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $174,200.63), and a discount of 60% was applied to account for the risks associated with the Court's discretion to reduce civil penalties and obtaining an award of civil penalties (bringing the value of this claim closer to $69,680.25).

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25. The foregoing discussion confirms that the amount of the Agreement is adequate in light of Plaintiff's allegations and causes of action, the evidence at issue with respect to those allegations and causes of action, and legal and factual arguments and circumstances which pose challenges to certification, manageability, merits, and monetary recovery. The conclusion to be drawn from the foregoing analysis is that neither class certification, manageability, liability, nor the ability to adjudicate and/or recover monetary relief on a class-wide or representative basis is clear-cut, which is why the Parties elected to settle this matter. Class Counsel also recognized that additional discounts could be made to the risk-adjusted value to account for the costs and expenses associated with further litigation and the present value of obtaining a settlement now as opposed to monetary recovery, if any, that may be obtained in the future after further litigation. Class Counsel recognized the circumstances and realities of the case, applicable case law and regulations, and risks to recovery and applied appropriate discounts.

26. On August 25, 2021, Plaintiff provided notice by electronic upload to the Labor and Workforce Development Agency and written notice by certified mail to Defendant of his intent to pursue civil penalties under California Labor Code section 2698, et seq for Defendant's alleged violations of the California Labor Code ("PAGA Notice"). A true and correct copy of the PAGA Notice is attached hereto as "**EXHIBIT 2**."

27. Class Counsel submits that the Agreement is fair, reasonable, and adequate, and is in the best interest of Plaintiff, Class Members, Aggrieved Employees, and the State of California. Class Counsel further submits that the Agreement is within an acceptable range of recovery for this type of litigation given the strengths and weaknesses of the case, the inherent costs and risks of further litigation, and the costs and risks associated with class certification, representative adjudication, trial, and/or appeals.

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

Executed this 7th day of October 2024, at Glendale, California.

______________________________

Elizabeth Parker-Fawley

**LAWYERS *for* JUSTICE, PC**
410 West Arden Avenue, Suite 203
Glendale, California 91203

# EXHIBIT 1

# CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement ("Agreement") is made by and between Plaintiff Joel Sanchez ("Plaintiff") and Defendant Rally Auto Group, Inc., ("Defendant") (collectively with Plaintiff, the "Parties") in the lawsuits entitled *Joel Sanchez v. Rally Auto Group, Inc.*, Case No. 21STCV29625 *("Sanchez Class Action");* and Joel Sanchez v. Rally Auto Group, Inc., Case No. 21AVCV00897 ("*Sanchez* PAGA Action"); (collectively, the "Settled Actions"). The Agreement refers to Plaintiff and Defendant collectively as "Parties," or individually as "Party."

## 1. <u>DEFINITIONS.</u>

1.1. "Administrator" means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.2. "Administration Costs" means the amount the Administrator will be paid from the Total Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Parties and approved by the Court in connection with Preliminary Approval of the Settlement.

1.3. "Aggrieved Employee" means all current and former hourly-paid or non-exempt employees of Defendant in California employed between September 1, 2020 through April 24, 2024.

1.4. "Class" or "Class Member(s)" means all current and former hourly-paid or nonexempt employees of Defendant in California employed at any time between August 11, 2017 through April 24, 2024, who do not timely opt-out of the Settlement.

1.5. "Class Counsel" means Arby Aiwazian, Joanna Ghosh, Vartan Madoyan, and Jeremy Stern of Lawyers *for* Justice, PC and all the lawyers of this firm acting on behalf of Plaintiff and the Class.

1.6. "Attorneys' Fees and Costs" means the amounts allocated to Class Counsel for reasonable attorneys' fees and reimbursement of expenses, respectively, incurred to prosecute the Litigation.

1.7. "Class Data" means Class Member identifying information in Defendant's possession including the Class Member's full name, last-known mailing address, Social Security number, and hire and termination dates reflecting the number of Class Period Workweeks and PAGA Pay Periods.

1.8. "Class Member Address Search" means the Administrator's investigation and search for Class Members' current mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database and direct contact by the Administrator with Class Members.

1.9. "Class Notice" means the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, to be mailed to Class Members in the form, without material variation, attached as "**Exhibit A**" and incorporated by reference into this Agreement.

1.10. "Class Period" means the period from August 11, 2017 through April 24, 2024.

1.11. "Class Representative" or "Plaintiff" mean Joel Sanchez.

1.12. "Enhancement Award" means the payment to the Class Representative for initiating the Litigation and providing services in support of the Litigation.

1.13. "Class Settlement" means the settlement and resolution of the Released Class Claims.

1.14. "Court" means the Superior Court of California, County of Los Angeles.

1.15. "Defendant" means Rally Auto Group, Inc.

1.16. "Defense Counsel" means Spencer W. Waldron of Fisher & Phillips LLP.

1.17. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.18. "Final Approval" means the Court's order granting final approval of the Settlement.

1.19. "Final Approval Hearing" means the hearing at which the Court will consider and determine whether the Settlement should be granted Final Approval.

1.20. "Total Settlement Amount" means Six Hundred Thousand Dollars and Zero Cents ($600,000.00) which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Total Settlement Amount will be used to pay Individual Settlement Payments, Individual PAGA Payments, the LWDA PAGA Payment, Attorneys' Fees and Costs, Enhancement Award, and the Administration Costs.

1.21. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.

1.22. "Individual Settlement Payment" means the net payment of each Participating Class Member's Individual Settlement Share, after reduction for the employee's share of taxes and withholdings with respect to the portion of the Individual Settlement Share allocated as wages, as provided in Paragraph 3.2.5 below.

1.23. "Individual Settlement Share" means the *pro rata* share of the Net Settlement

Amount that a Class Member may be eligible to receive under the Settlement Agreement, to be calculated in accordance with Paragraph 3.2.5.

1.24. "Settled Actions" means (1) Plaintiff's class action lawsuit alleging wage and hour violations against Defendant, entitled *Joel Sanchez v. Rally Auto Group, Inc.,* initiated on August 11, 2021, Los Angeles Superior Court Case No. 21STCV29625 and (2) Plaintiff's PAGA representative action lawsuit under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. against Defendant, entitled *Joel Sanchez v. Rally Auto Group, Inc.,* initiated on November 5, 2021, Los Angeles Superior Court Case No. 21AVCV00897.

1.25. "LWDA" means the California Labor and Workforce Development Agency.

1.26. "LWDA PAGA Payment" means the 75% of the PAGA Penalty Amount paid to the LWDA under Labor Code section 2699, subd. (i).

1.27. "Net Settlement Amount" means the Total Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Penalty Amount, Enhancement Award, Attorneys' Fees and Costs, and the Administration Costs. The remainder is to be paid to Participating Class Members as Individual Settlement Payments.

1.28. "Non-Participating Class Member" means any Class Member who opts out of the Class Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.29. "Operative Complaint" means the First Amended Consolidated Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, et seq., encompassing Plaintiff's Class and PAGA claims filed in conjunction with this Settlement Agreement and attached as "**Exhibit B**" hereto.

1.30. "PAGA Pay Periods" means the number of weeks each Aggrieved Employee was employed by Defendant as an hourly-paid or non-exempt employee within California during the PAGA Period, which information will be provided to the Settlement Administrator by Defendant. PAGA Pay Periods are calculated by the Settlement Administrator, based on each Aggrieved Employees' employment for five (5) or more calendar days during a pay period based on hire and termination dates, as follows: if an Aggrieved Employee's hire date was within the PAGA Period and was on Monday, he or she will be credited for that PAGA Pay Period (i.e., he or she worked five (5) or more calendar days during this pay period); if an Aggrieved Employee's termination date was within the PAGA Period and was on a Friday, he or she will be credited for that PAGA Pay Period (i.e., he or she worked five (5) or more calendar days during this pay period). If an Aggrieved Employee's hire and/or termination date falls outside of the PAGA Period, the start and/or end dates of the PAGA Period (i.e., July 20, 2020 and/or May 31, 2022) shall be deemed the start and/or end dates for that Aggrieved Employee.

1.31. "PAGA Period" means the period from September 1, 2020 through April 24, 2024.

1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.33. "PAGA Notice" means Plaintiff's August 25, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.34. "PAGA Penalty Amount" means the total amount of PAGA civil penalties, in the amount of $75,000.00, to be paid from the Total Settlement Amount, allocated as 25% to the Aggrieved Employees ($18,750.00) and 75% to the LWDA ($56,250.00) in settlement of PAGA claims.

1.35. "PAGA Settlement" means the settlement and resolution of the Released PAGA Claims.

1.36. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class Settlement.

1.37. "Plaintiff" means Joel Sanchez, the named plaintiff in the Litigation.

1.38. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.39. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

1.40. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.

1.41. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.

1.42. "Released Parties" means Defendant and its divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, clients, customers, suppliers, and vendors.

1.43. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member, in accordance with the requirements set forth in Paragraph 7.5.1 below.

1.44. "Response Deadline" means sixty (60) calendar days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) email or mail Requests for Exclusion from the Class Settlement, or (b) email or mail his or her Objection to the Class Settlement. The Response Deadline shall be extended by fourteen (14) calendar days for those Class Members to whom Class Notices are resent after having been returned undeliverable to the Administrator.

1.45. "Workweeks" means the number of weeks each Class Member was employed by Defendant as an hourly-paid or non-exempt employee within California during the Class

Period, which information will be provided to the Settlement Administrator by Defendant. Workweeks are calculated by the Settlement Administrator, based on each Class Members' employment for three (3) or more calendar days during a workweek based on hire and termination dates , as follows: if a Class Member's hire date was within the Class Period and was on Monday, Tuesday, or Wednesday, he or she will be credited for that Workweek (i.e., he or she worked three (3) or more calendar days during this workweek); if a Class Member's termination date was within the Class Period and was on a Wednesday, Thursday, or Friday, he or she will be credited for that Workweek (i.e., he or she worked three (3) or more calendar days during this workweek). If a Class Member's hire and/or termination date falls outside of the Class Period, the start and/or end dates of the Class Period shall be deemed the start and/or end dates for that Class Member.

## 2. <u>RECITALS.</u>

2.1. On August 11, 2021, Plaintiff commenced the class action lawsuit entitled *Joel Sanchez v. Rally Auto Group, Inc.,* in the Superior Court of California for the County of Los Angeles, Case No. 21STCV29625 (i.e., *Sanchez* Class Action), by filing the Class Action Complaint for Damages, which alleged ten causes of action against Defendant for: (1) failure to pay overtime wages pursuant to California Labor Code sections 510, 1194, and 1198 and the IWC Wage Orders; (2) failure to provide meal periods and associated premiums pursuant to California Labor Code sections 226.7 and 512 and the IWC Wage Orders; (3) failure to provide rest periods and associated premiums pursuant to California Labor Code sections 226.7 and 512 and the IWC Wage Orders; (4) failure to pay all minimum wages owed pursuant to California Labor Code sections 1194, 1194.2, 1197, and 1197.1 and the IWC Wage Orders; (5) failure to pay all wages owed at termination pursuant to California Labor Code sections 201-203 and the IWC Wage Orders; (6) failure to timely pay wages during employment pursuant to California Labor Code section 204 and the IWC Wage Orders; (7) failure to furnish accurate itemized wage statements pursuant to California Labor Code section 226 and the IWC Wage Orders; (8) failure to keep complete or accurate payroll records pursuant to California Labor Code section 1174(d) and the IWC Wage Orders; (9) failure to reimburse all necessary business expenses pursuant to California Labor Code sections 2800 and 2802 and the IWC Wage Orders; and (10) violations of California Business & Professions Code sections 17200, *et seq*.

2.2. On August 25, 2021, Plaintiff provided written notice to the LWDA and to Defendant of the specific provisions of the California Labor Code that Defendant allegedly violated (i.e., PAGA Notice). Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice. On November 5, 2021, Plaintiff commenced the PAGA action entitled *Joel Sanchez v. Rally Auto Group, Inc.,* in the Superior Court of California for the County of Los Angeles, Case No. 21AVCV00897 (i.e., *Sanchez* PAGA Action), by filing a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., alleging one cause of action against Defendant for civil penalties under California Labor Code § 2698, *et seq*. For the purposes of effectuating this Settlement, the Parties will stipulate that Plaintiff shall file a First Amended Consolidated Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the Class Action, consolidating the Class Action and PAGA Action (i.e., Operative

Complaint).

2.3. Defendant has denied the allegations in the Class Action and PAGA Action, and strongly denies all material allegations set forth in the Operative Complaint, and has asserted numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation, Defendant desires to fully and finally settle the Litigation, Released Class Claims, and Released PAGA Claims.

2.4. On May 3, 2023, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

2.5. Prior to mediation, Plaintiff obtained, through informal discovery, a random sampling of Class Members' time and pay records, as well as information and documents concerning the claims set forth in the Litigation, including but not limited to, Defendant's employee handbook and relevant wage and hour policies, datapoints, including and not limited to, information regarding the number of Class Members and Aggrieved Employees, the number of workweeks worked by the Class Members, the number of pay periods worked by the Aggrieved Employees, and the average rate of pay of the Class Members.

2.6. The Court has not yet granted class certification, as the Parties agreed to mediate prior to the filing of any motion to determine whether a class should be certified.

2.7. The Parties, Class 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.

3.1. Total Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay $600,000.00 as the Total Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Settlement Shares. Defendant has no obligation to pay the Total Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Total Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Total Settlement Amount will revert to Defendant.

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

3.2.1. To Plaintiff: Enhancement Award to the Class Representative of not more than Ten Thousand Dollars and Zero Cents ($10,000.00) (in addition to any Individual Settlement Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for an Enhancement Award that does not exceed this amount. As part of the motion for Attorneys' Fees and Costs, Plaintiff will seek Court approval for any Enhancement Award no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves an Enhancement Award less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount to be distributed to Participating Class Members. The Administrator will pay the Enhancement Award using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Enhancement Award.

3.2.2. To Class Counsel: Attorneys' Fees to Class Counsel of not more than 35%, which is currently estimated to be Two Hundred Ten Thousand Dollars and Zero Cents ($210,000.00) and reimbursement of actual litigation costs and expenses associated with Class Counsel's litigation of the Settled Actions. Defendant will not oppose requests for these payments. Plaintiff and/or Class Counsel will file a motion for Attorneys' Fees and Costs no later than sixteen (16) court days prior to the Final Approval Hearing. These amounts will cover any and all work performed and any and all costs incurred by Class Counsel in connection with the Litigation, including without limitation all work performed to date, and all work to be performed and all costs to be incurred in connection with obtaining the Court's approval of the Settlement, as well as any objections raised, and any appeals necessitated by those objections. Class Counsel shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. Any portion of the Attorneys' Fees and Costs Payment not awarded to Class Counsel shall be part of the Net Settlement Amount to be distributed to Participating Class Members.

3.2.3. To the Administrator: The Settlement Administrator will be paid an amount not to exceed Eleven Thousand Seven Hundred Fifty Dollars ($11,750.00) for the reimbursement of actual and reasonable costs of administration of the Settlement and distribution of payments under the Settlement, Any portion of the estimated, designated, and/or awarded Administration Costs which are not in fact required to fulfill payment to the Administrator to undertake the required settlement administration duties will become part of the Net Settlement Amount to be distributed to Participating Class Members.

3.2.4. PAGA Penalty Amount: Subject to approval by the Court, the Parties agree that the amount of Seventy-Five Thousand Dollars and Zero Cents ($75,000.00) from the Total Settlement Amount will be allocated toward penalties under PAGA ("PAGA Penalties"), of which seventy-five percent (75%), or 56,250.00, will be paid to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) or, $18,750.00, will be distributed to Aggrieved Employees on a *pro rata* basis, based on PAGA Pay Periods during the PAGA Period (i.e., Individual PAGA Payment).

3.2.5. Individual Settlement Share Calculations: Individual Settlement Shares will be calculated and apportioned from the Net Settlement Amount based on the Class Members' Workweeks, as follows:

a. After Preliminary Approval of the Settlement, the Administrator will divide the Net Settlement Amount by the total number of Workweeks worked by all Class Members to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.

b. After Final Approval of the Settlement, the Administrator will divide the final Net Settlement Amount by the Workweeks of all Participating Class Members to yield the "Final Workweek Value," and multiply each Participating Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.

3.2.6. Individual PAGA Payment Calculations: Individual PAGA Payments will be calculated and apportioned from the 25% share of the PAGA Penalties based on the Aggrieved Employees' PAGA Pay Periods, as follows: The Administrator will divide the 25% portion of the PAGA Penalties attributed to Aggrieved Employees, i.e. $18,750.00, by the PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period resulting in the PAGA Pay Period Value and then multiplying the PAGA Pay Period Value by the number of PAGA Pay Periods worked by each individual Aggrieved Employee during the PAGA Period.

3.2.7. Tax Allocation of Individual Settlement Payments and Individual PAGA Payments. Twenty percent (20%) of each Participating Class Member's Individual Settlement Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Eighty percent (80%) of each Participating Class Member's Individual Settlement Payment will be allocated to settlement of claims for penalties, interest, and non-wage damages (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Settlement Payment. Any payment for an Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary. The Administrator will have the option to pay the Individual Settlement Payment and Individual PAGA Payment by way of a single check.

3.2.8. Effect of Non-Participating Class Members on Calculation of Individual Settlement Payments. Non-Participating Class Members will not receive any Individual Settlement Payments. The Administrator will retain amounts equal to their Individual Settlement Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

## 4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Workweeks and PAGA Pay Periods. Based on a review of its records, during the period from August 11, 2017, through May 3, 2023, Defendant estimates there were 610 Class Members who were employed by Defendant for a total of 43,058 Workweeks, and during the period September 1, 2020, through May 3, 2023, there were 321 Aggrieved

Employees who worked a total of 7,714 PAGA Pay Periods.

4.2. Class Data. Not later than twenty-one (21) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Total Settlement Amount. Defendant shall fully fund the Total Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than f twenty-one (21) calendar days after either the Effective Date or the date the Administrator provides wiring instructions for the funding of the Total Settlement Amount to Defense Counsel, whichever is later.

4.4. Payments from the Total Settlement Amount. Within fourteen (14) calendar days after Defendant funds the Total Settlement Amount, the Administrator will mail checks for all Individual Settlement Payments, all Individual PAGA Payments, the LWDA Payment, the Administration Costs, the Attorneys' Fees and Costs, and the Enhancement Award. Disbursement of the Attorneys' Fees and Costs and the Enhancement Award shall not precede disbursement of Individual Settlement Payments and Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Settlement Payments and/or Individual PAGA Payments and send them to the Class Members and/or Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than one hundred eighty (180) calendar days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Settlement Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are retuned undelivered without USPS forwarding address. Within seven (7) calendar days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class

Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Settlement Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks California Women's Law Center, a nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) (the "*Cy Pres* Recipient"). The Parties, Class Counsel, and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended *Cy Pres* Recipient.

4.4.4. The payment of Individual Settlement Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members or Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

**5. RELEASES OF CLAIMS**. Upon the Effective Date and full funding of the Total Settlement Amount (including all employer payroll taxes owed on the Wage Portion of the Individual Settlement Payments), Plaintiff, all Participating Class Members (i.e., Class Members who do not submit a valid and timely Request for Exclusion), and Aggrieved Employees will release claims against all Released Parties as follows:

5.1. General Release of Claims by Plaintiff. Upon the Effective Date and full funding of the Total Settlement Amount, Plaintiff will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of and from all claims arising from her employment with Defendant, separation of employment from Defendant, whether known or unknown, arising under any federal or local law, or statute, including, *inter alia*, those arising under the California Labor Code, Fair Labor Standards Act, Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement Income Security Act, National Labor Relations Act, California Corporations Code, California Business and Professions Code, California Fair Employment and Housing Act, California Constitution (all as amended), and law of contract and tort, as well as for termination, lost wages, benefits, other employment compensation, emotional distress, medical expenses, other economic and non-economic damages, attorney fees, and costs, arising on or before the date on which the Settlement is executed. With respect to those claims released by Plaintiff in an individual capacity, Plaintiff acknowledges and waives any and all rights and benefits available under California Civil Code Section 1542, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff understands and agrees that claims or facts in addition to or different from those which are not known or believed by her to exist may hereafter be discovered. It is Plaintiff's intention to settle fully and release all claims she now has against the Released Parties, whether known or unknown, suspected or unsuspected. Notwithstanding the above, the general release by Plaintiff shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

5.2. Released Class Claims by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, in the Operative Complaint and ascertained in the course of the Litigation, including, any and all claims, actions, and causes of action, arising during the Class Period, for: (1) failure to pay overtime wages pursuant to California Labor Code sections 510, 1194, and 1198 and the IWC Wage Orders; (2) failure to provide meal periods pursuant to California Labor Code sections 226.7 and 512 and the IWC Wage Orders; (3) failure to provide rest periods pursuant to California Labor Code sections 226.7 and 512 and the IWC Wage Orders; (4) failure to pay all minimum wages owed pursuant to California Labor Code sections 1194, 1194.2, 1197, and 1197.1 and the IWC Wage Orders; (5) failure to pay all wages owed at termination pursuant to California Labor Code sections 201-203 and the IWC Wage Orders; (6) failure to pay all wages in a timely manner during employment pursuant to California Labor Code section 204 and the IWC Wage Orders; (7) failure to furnish accurate itemized wage statements pursuant to California Labor Code section 226(a) and the IWC Wage Orders; (8) failure to maintain adequate payroll records pursuant to California Labor Code section 1174(d) and 1174.5 and the IWC Wage Orders; (9) failure to reimburse all necessary business expenses pursuant to California Labor Code sections 2800 and 2802 and the IWC Wage Orders; and (10) violations of California Business & Professions Code sections 17200, *et seq.* Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3. Released PAGA Claims by Aggrieved Employees: The State of California and all Aggrieved Employees, including Non-Participating Class Members who are 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, in the Operative Complaint, based on the facts contained in the, the PAGA Notice and arising during the PAGA Period, and ascertained in the course of the Litigation for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802 and IWC Wage Orders 1-2001, 4-2001, and 16-2001.

**6. MOTION FOR PRELIMINARY APPROVAL**. The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the

Court's current checklist for Preliminary Approvals.

## 7. SETTLEMENT ADMINISTRATION.

7.1. Selection of Administrator. The Parties have jointly selected and will ask the Court to appoint ILYM Group, Inc., to serve as the Administrator and to perform all duties specified in this Agreement in exchange for payment of Administration Costs. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Notice to Class Members.

7.2.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class Data.

7.2.2. Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice, substantially in the form attached to this Agreement as "**Exhibit A**". The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Settlement Payment and/or Individual PAGA Payment payable to the Class Member and/or Aggrieved Employee, and the number of Workweeks and/or PAGA Pay Periods (used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.2.3. Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.2.4 The deadlines for Class Members' written objections to the Class Settlement, disputes regarding Workweeks and/or Pay Periods, and Requests for Exclusion from the Class Settlement will be extended an additional fourteen (14) calendar days beyond the sixty (60) calendar days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.3 Requests for Exclusion from the Class Settlement (Opt-Outs).

7.3.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by email or mail, a signed written Request for Exclusion not later than the Response Deadline. A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Class Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely emailed or postmarked by the Response Deadline. Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.

7.3.2. The Administrator may not reject a Request for Exclusion from the Class Settlement as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.3.4. Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement are deemed to be Participating Class Members under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' release of Released Class Claims under Paragraph 5.2 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Class Settlement.

7.3.5 Class Members who submit a valid and timely Request for Exclusion from the Class Settlement are Non-Participating Class Members and shall not receive Individual Settlement Payments or have the right to object to the Class Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are also Aggrieved Employees are deemed to release the Released PAGA Claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.4. <u>Challenges to Calculation of Workweeks</u>. Each Class Member and Aggrieved Employee shall have until the Response Deadline to challenge the number of Class Workweeks and/or PAGA Pay Periods (if any) allocated to the Class Member and/or Aggrieved Employee in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and/or PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.5. Objections to Class Settlement.

7.5.1. Only Participating Class Members may object to the Class Settlement and/or this Agreement, including contesting the fairness of the Class Settlement, and/or amounts requested for the Attorneys' Fees and Costs and/or Enhancement Award.

7.5.2. Participating Class Members may send written objections to the Administrator, by email or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline.

7.5.3. Non-Participating Class Members have no right to object to the Class Settlement.

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

7.6.1. Website, Email Address and Toll-Free Number. The Administrator will post information of interest to Class Members including the date, time, and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Attorneys' Fees and Costs, and Enhancement Award, the Final Approval and the Judgment on a portion of it's website. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls and emails.

7.6.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) calendar days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion from the Class Settlement ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion from the Class Settlement; (c) copies of all Requests for Exclusion from the Class Settlement submitted (whether valid or invalid).

7.6.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion from the Class Settlement (whether valid or invalid) received, objections to the Class Settlement received, challenges to Workweeks and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Settlement

Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.6.4. Workweek and/or PAGA Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or PAGA Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

7.6.5. Final Report by Settlement Administrator. Within ten (10) calendar days after the Administrator disburses all funds in the Total Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement.

**8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE**. Based on its records, Defendant estimates that: (1) during the period from August 11, 2017 to May 3, 2023, there were 610 Class Members and 43,058 total Workweeks, and (2) during the period from September 1, 2020, through May 3, 2023, there were 321 Aggrieved Employees who worked a total of 7,714 PAGA Pay Periods. Should the workweeks increase beyond 10% worked by the Class Members during the Class Release Period, Defendant shall increase the Total Settlement Amount on a pro-rata basis equal to the percentage increase in the number of workweeks worked by the Class Members above 10% (e.g., if the number of workweeks increases by 11% to 47,794 workweeks, the Total Settlement Amount will increase by 1%). However, if the escalator clause is triggered, Defendant may alternatively choose at its sole discretion to end the Class Release Period on the date that the increase would otherwise be triggered.

**9. DEFENDANT'S RIGHT TO WITHDRAW**. If 10% or more of the Class Members exercise their rights to exclude themselves and opt out of the Settlement, Defendant may, in its sole discretion, unilaterally withdraw from and terminate the Settlement no later than five (5) business days after being informed, in writing by the settlement administrator, that 10% or more of the Class Members excluded themselves from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Administration Costs incurred to that point.

**10. MOTION FOR FINAL APPROVAL**. Not later than sixteen (16) court days before the calendared Final Approval Hearing, Class Counsel will file in Court, a motion for final approval of the Settlement that includes a request for approval of the Settlement, a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Class Counsel shall provide drafts of these documents to Defense Counsel not later than five (5) calendar days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1. Response to Objections to the Class Settlement. Each Party retains the right to respond to any objection to the Class Settlement raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Enhancement Award, Attorneys Fees' and Costs, and/or Administration Costs shall not constitute a material modification to the Agreement within the meaning of this paragraph.

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

10.4. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Costs reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Enhancement Award or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Total Settlement Amount remains unchanged.

**11. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

## 12. ADDITIONAL PROVISIONS.

12.1. No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Litigation have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Litigation have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval, or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Litigation, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Litigation will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Class Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

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

12.4. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

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

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

12.7 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.8. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court. Notwithstanding the foregoing, the Parties agree that any dates contained or contemplated in this Agreement may be modified by agreement of counsel for the Parties in writing without approval by the Court if the Parties agree and cause exists for such modification.

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

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

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

12.12. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during the Litigation and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

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

12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

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

To Plaintiff and Class Counsel:

Arby Aiwazian, Esq.
Joanna Ghosh, Esq.
Vartan Madoyan, Esq.
Jeremy Stern, Esq.
**LAWYERS *for* JUSTICE, PC**
410 West Arden Avenue, Suite 203
Glendale, California 91203

To Defendant and Defendant's Counsel:

Spencer W. Waldron, Esq.
**FISHER & PHILLIPS LLP**
2050 Main Street, Suite 1000
Irvine, CA 92614

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

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

**IT IS SO AGREED.**

**PLAINTIFF JOEL SANCHEZ**

Electronically Signed 2024-03-28 14:32:25 UTC - 23.241.128.57

Dated: 03/28/2024 Joel Sanchez

Nintex AssureSign® 54e8717d-1220-4b32-8734-b140016827c6

Joel Sanchez, Plaintiff

**DEFENDANT RALLY AUTO GROUP, INC.**

Dated: __________________ Full Name: __________________________

Title: ______________________________

On behalf of Rally Auto Group, Inc.

**APPROVED AS TO FORM ONLY:**

Dated: March 28, 2024 By: Vartan S. Madoyan

Vartan Madoyan
Jeremy Stern
**LAWYERS *for* JUSTICE, PC**
*Attorneys for* Plaintiff

Dated: __________________ By: ______________________________________

Spencer W. Waldron
**FISHER & PHILLIPS LLP**
*Attorneys for* Defendant

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

**IT IS SO AGREED.**

**PLAINTIFF JOEL SANCHEZ**

Dated: ________________

________________________
Joel Sanchez, Plaintiff

**DEFENDANT RALLY AUTO GROUP, INC.**

Dated: 03/26/2024

Full Name: Patrick Bonas Patrick Bonas
Patrick Bonas (Mar 26, 2024 13:15 PDT)

Title: VP/GM

On behalf of Rally Auto Group, Inc.

**APPROVED AS TO FORM ONLY:**

Dated: ________________

By: ________________________
Vartan Madoyan
Jeremy Stern
**LAWYERS *for* JUSTICE, PC**
*Attorneys for* Plaintiff

Dated: 3/26/2024

By: ________________________
Spencer W. Waldron
**FISHER & PHILLIPS LLP**
*Attorneys for* Defendant

# EXHIBIT 2

LAWYERS FOR JUSTICE, PC

August 25, 2021

***BY ONLINE SUBMISSION***

California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

**Re:** ***RALLY AUTO GROUP, INC.***

Dear Representative:

We have been retained to represent Joel Sanchez against Rally Auto Group, Inc. (including any and all affiliates, subsidiaries, parents, directors, officers, agents, and executive employees) (collectively referred to as "Rally Auto Group") for violations of California wage-and-hour laws. Mr. Sanchez seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, et seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA") and all other remedies available under PAGA.

Mr. Sanchez seeks these remedies on behalf of the State of California and "aggrieved employees," as defined herein. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Rally Auto Group employed Mr. Sanchez as an hourly-paid, non-exempt employee from approximately July 2016 to approximately August 2020, in the State of California. Pursuant to the Emergency Rules Related to COVID-19, Rule 9(a), "the statutes of limitation and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020."

The "aggrieved employees" that Mr. Sanchez may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California.

Based on the following facts and theories, Rally Auto Group has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Orders 4-2001, 7-2001, and 9-2001.

Rally Auto Group required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks and failed to compensate aggrieved employees for this time. Such work included, but was not limited to, waiting in line to clock into work, responding to work-related inquiries, and conducting work-related tasks.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Mr. Sanchez and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week. Therefore, Mr. Sanchez and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, Rally Auto Group required Mr. Sanchez and other aggrieved employees to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods.

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, Rally Auto Group failed to pay Mr. Sanchez and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Rally Auto Group failed to pay Mr. Sanchez and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Rally Auto Group did not provide Mr. Sanchez and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Rally Auto Group were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Mr. Sanchez and other aggrieved employees, including time spent working off-the-clock and during meal and rest periods as discussed above.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day's rest in a seven-day workweek, that no employer of labor shall cause his employees to work more than six days in a workweek, and that an employer shall pay a civil penalty in the amounts of fifty dollars ($50) for each aggrieved employee per pay period for the initial violation and one hundred dollars ($100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Mr. Sanchez and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Mr. Sanchez and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Mr. Sanchez and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to take at least one (1) day of rest, and when Mr. Sanchez and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, Rally Auto Group failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Mr. Sanchez and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 2810.5 requires an employer to provide written notice to an employee, at the time of hiring, containing the following information:

> The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable. Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances. The regular payday designated by the employer in accordance with the requirements of this code. The name of the employer, including any "doing business as" names used by the employer. The physical address of the employer's main office or principal place of business, and a mailing address, if different. The telephone number of the employer. The name, address, and telephone number of the employer's workers' compensation insurance carrier. That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates. Any other information the Labor Commissioner deems material and necessary.

Rally Auto Group failed to accurately provide aggrieved employees with the requisite notice in violation of California Labor Code section 2810.5.

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, Rally Auto Group did not provide Mr. Sanchez and other aggrieved employees with the minimum wages to which they were entitled for work performed "off-the-clock."

California Labor Code section 1198 provides that "The employment of any employee … under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage Orders, including *inter alia*, Wage Orders 4-2001, 7-2001, and 9-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay. During the relevant time period, Rally Auto Group failed to pay Mr. Sanchez and other aggrieved employees half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay for workdays in which Mr. Sanchez and the other aggrieved employees reported to work and were furnished less than half the usual or scheduled day's work. During the relevant time period, Rally Auto Group failed to pay Mr. Sanchez and other aggrieved employees for two (2) hours at the employee's regular rate of pay on days in which Mr. Sanchez and the other aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Mr. Sanchez and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Rally Auto Group. These costs include, but are not limited to, the use of personal phones for work-related purposes, the purchasing and maintenance of shoes in compliance with the dress code, and the purchasing and maintenance of supplies, including but not limited to gloves and masks.

Therefore, on behalf of all aggrieved employees, Mr. Sanchez seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA, including civil penalties pursuant to Labor Code section 558.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

With kind regards,

Edwin Aiwazian, Esq.

Cc: (By U.S. Certified Mail / Return Receipt Requested)

Rally Auto Group, Inc.
c/o Teryn B Clarke
Agent for Service of Process
39012 Carriage Way
Palmdale, CA 93551