

1                   **SETTLEMENT AGREEMENT OF CLASS ACTION AND PRIVATE ATTORNEYS**

2   **GENERAL ACT CLAIMS**

3                   This Settlement Agreement of Class Action and Private Attorneys General Act Claims  
4 (“Settlement” or “Settlement Agreement”) is made between Corey Jones, Demetrea Gray, and  
5 Eddie Fairley (collectively “Named Plaintiffs”) as individuals and on behalf of all others  
6 similarly situated and on behalf of the State of California and other alleged aggrieved employees  
7 pursuant to the Private Attorneys General Act, on the one hand, and Defendants DAA  
8 Draexlmaier Automotive of America LLC and DAN Draexlmaier Automotive North America  
9 LLC<sup>1</sup> (“Defendants”) (collectively, the “Parties” and individually, a “Party”) on the other hand,  
10 in the Lawsuits pending in Alameda County Superior Court (as defined below). This Settlement  
11 was reached pursuant to a mediation conducted on April 20, 2021 and a mediator’s proposal  
12 accepted on April 27, 2021.

13                   **I.       DEFINITIONS**

14                   **A.**       “Class Counsel” means Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh, of  
15 Lawyers *for* Justice, PC, 410 West Arden Avenue, Suite 203, Glendale, California 91203;  
16 Daniel F. Gaines and Alex P. Katofsky, of Gaines & Gaines, APLC, 27200 Agoura Rd., Suite  
17 101, Calabasas, California 91301; and Matthew Matern, Launa Adolph, and Kayvon Sabourian,  
18 of Matern Law Group, PC, 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California,  
19 90266.

20                   **B.**       “Class Counsel Costs Award” means the amount not to exceed Sixty Thousand  
21 Dollars (\$60,000) to be paid from the Gross Settlement Amount, subject to approval by the  
22 Court, for Class Counsels’ litigation costs and expenses incurred in investigation, litigation, and  
23 resolution of the Lawsuits, and administration of the Settlement, including anticipated costs  
24 incurred through Final Approval and disbursement of payments under this Settlement  
25 Agreement and obtaining entry of the judgment terminating the Lawsuits. Defendants shall not  
26 oppose or otherwise object to any request made consistent with this paragraph.  
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<sup>1</sup> Defendant DAN Draexlmaier Automotive North America LLC has been merged into Draexlmaier Automotive Technologies of America LLC.

*Corey Jones*

1           **C.**     “Class Counsel Fees Award” means the amount not to exceed thirty-five percent  
2 (35%) of the Gross Settlement Amount (i.e., up to Five Hundred Sixteen Thousand, Two  
3 Hundred Fifty Dollars (\$516,250.00)), to be paid from the Gross Settlement Amount, subject to  
4 approval by the Court, for Class Counsels’ attorneys’ fees incurred in investigation, litigation,  
5 and resolution of the Lawsuits, and administration of the Settlement, including anticipated fees  
6 incurred through Final Approval and disbursement of payments under this Settlement  
7 Agreement and obtaining entry of the judgment terminating the Lawsuits. Defendants shall not  
8 oppose or otherwise object to any request made consistent with this paragraph.

9           **D.**     “Class” or “Class Members” mean all current and/or former direct employees of  
10 Defendants employed in California in non-exempt or hourly-paid positions from May 11, 2016  
11 through June 26, 2021.

12           **E.**     “Class Member Payments” means the amount payable from the Class Payout  
13 Fund to each Class Member. Class Member Payments are separate and distinct from the  
14 Individual PAGA Payments that will be paid to PAGA Employees.

15           **F.**     “Class Payout Fund” means all funds remaining from the Gross Settlement  
16 Amount after deducting the Court-awarded Named Plaintiff Enhancement Payments, Class  
17 Counsel Fees Award, Class Counsel Costs Award, Settlement Administration Costs, and PAGA  
18 Amount.

19           **G.**     “Class Settlement” means the non-PAGA portion of the settlement embodied in  
20 this Settlement Agreement to settle and resolve the Settlement Class Released Claims of  
21 Settlement Class Members.

22           **H.**     “Court” means the Superior Court of California for the County of Alameda ,  
23 located at 1221 Oak Street, Oakland, CA 94612, where the Jones Action, which the parties have  
24 agreed to designate as the lead case pursuant to Section III.B of the Settlement Agreement, is  
25 currently pending.

26           **I.**     “Defendants” means DAA Draexlmaier Automotive of America LLC and DAN  
27 Draexlmaier Automotive North America LLC.

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1           **J.**     “Defendants’ Counsel” means Jennifer Redmond, Brian Fong, and Luis Arias of  
2 Sheppard, Mullin, Richter & Hampton LLP, Four Embarcadero Center, 17<sup>th</sup> Floor, San  
3 Francisco, California 94111.

4           **K.**     “Effective Date” means the date by which the judgment becomes final. For  
5 purposes of this Settlement Agreement, the judgment “becomes final” only after the Court grants  
6 the motion for Final Approval of the Settlement and upon either (i) if there are no objections to  
7 the Settlement, or any objections are withdrawn at or prior to the Final Approval hearing, the  
8 date Final Approval of the Settlement is entered by the Court; or (ii) if there are one or more  
9 objections to the Settlement which are not withdrawn at or prior to the Final Approval hearing,  
10 the later of: (ii)(a) the period for filing any appeal, writ, or other appellate proceeding  
11 challenging or opposing the Settlement (i.e., 60 days following entry of final judgment) has  
12 elapsed without any appeal, writ, or other appellate proceeding having been filed; (ii)(b) any  
13 appeal, writ, or other appellate proceeding challenging or opposing the Settlement has been  
14 dismissed finally and conclusively with no right to pursue further remedies or relief; or (ii)(c)  
15 any appeal, writ, or other appellate proceeding has upheld the Court’s Final Approval of the  
16 Settlement with no right to pursue further remedies or relief. In this regard, it is the intention of  
17 the Parties that the Settlement shall not become effective, and Defendants will not be obligated  
18 to fund this Settlement, until the Court’s order approving the Settlement becomes final, and there  
19 is no further recourse by an appellant, objector, or intervenor who seeks to contest the  
20 Settlement.

21           **L.**     “Employee List” means the list of all Employees that Defendants will diligently  
22 and in good faith compile from their records to accurately reflect Employees’ last-known full  
23 names, mailing address, telephone number, Social Security number, Workweeks, and Pay  
24 Periods.

25           **M.**     “Employees” means the Class Members and PAGA Employees collectively.

26           **N.**     “Fairley Action” means the lawsuit entitled *Eddie Fairley, individually, and on*  
27 *behalf of other members of the general public similarly situated and on behalf of other*  
28 *aggrieved employees pursuant to the California Private Attorneys General Act v. DAA*

1 *Draexlmaier of America LLC, an unknown business entity; DAN Draexlmaier Automotive North*  
2 *America LLC, an unknown business entity; and Does 1 through 100, inclusive, filed in Alameda*  
3 *County Superior Court, on or about September 3, 2020, Case No. RG20073122.*

4 **O.** “Final Approval” means the Court’s order granting final approval of the  
5 Settlement Agreement.

6 **P.** “Gray Action” means the lawsuit entitled *Demetrea Gray, individually and on*  
7 *behalf of all others similarly situated v. DAA Draexlmaier Automotive of America, LLC, a South*  
8 *Carolina limited liability company; and DOES 1 through 10, inclusive, filed in Alameda County*  
9 *Superior Court, on or about August 24, 2020, Case No. HG20072329.*

10 **Q.** “Gross Settlement Amount” means a non-reversionary common fund to be paid  
11 jointly and severally by the Defendants in the amount of One Million, Four Hundred Seventy-  
12 Five Thousand Dollars (\$1,475,000.00), subject to increase pursuant to Section III.J.6.b herein,  
13 and includes without limitation any and all payments Defendants may be responsible for under  
14 the Settlement including Class Counsel Fees Award, Class Counsel Costs Award, Named  
15 Plaintiff Enhancement Payments, Class Member Payments, the PAGA Amount (which includes  
16 payment to the LWDA and PAGA Employees), Settlement Administration Costs, and  
17 employee-side payroll taxes. Defendants will be required to separately pay, in addition to the  
18 Gross Settlement Amount, the employer’s share of any payroll taxes and contributions due and  
19 owing on the wages portion of Class Member Payments as a result of the Settlement.

20 **R.** “Individual PAGA Payment” means the amount of the PAGA Payment payable to  
21 each PAGA Employee. Class Member Payments are separate and distinct from the Individual  
22 PAGA Payments that will be paid to PAGA Employees.

23 **S.** “Jones Action” means the lawsuit entitled *Corey Jones, on behalf of himself and*  
24 *all aggrieved employees pursuant to Labor Code § 2698 et seq. v. DAA Draexlmaier Automotive*  
25 *of America LLC, a South Carolina limited liability corporation, and DOES 1 through 10,*  
26 *inclusive, filed in Alameda County Superior Court, on or about May 11, 2020, Case No.*  
27 *HG20062125.*

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1           **T.**     “Lawsuits” means the Fairley Action, the Jones Action, and the Gray Action,  
2 which the Parties have agreed to consolidate as part of this Settlement.

3           **U.**     “LWDA” means the California Labor and Workforce Development Agency.

4           **V.**     “Named Plaintiff Enhancement Payments” means the not to exceed \$10,000 each,  
5 for a total of up to Thirty Thousand Dollars (\$30,000.00), to be paid to each Named Plaintiff for  
6 their time and effort spent pursuing the Lawsuits, for the risks associated with suing Defendants,  
7 and for their agreement to enter into a general release of all claims. Defendants shall not oppose  
8 or otherwise object to any requests made consistent with this paragraph.

9           **W.**     “PAGA” means the California Private Attorneys General Act, California Labor  
10 Code § 2698 *et seq.*

11          **X.**     “PAGA Employees” means all current and/or former direct employees of  
12 Defendants employed in California in non-exempt or hourly-paid positions from May 11, 2019  
13 through June 26, 2021.

14          **Y.**     “PAGA Amount” means the payment to the LWDA and the PAGA Employees in  
15 settlement of all claims for PAGA penalties, as defined in Section III.D.3 of this Settlement  
16 Agreement.

17          **Z.**     “PAGA Period” means the time period beginning May 11, 2019 through June  
18 26, 2021.

19          **AA.**    “PAGA Settlement” means the PAGA portion of the settlement identified in this  
20 Settlement Agreement, to settle and resolve the PAGA Released Claims of State the California  
21 with respect to PAGA Employees.

22          **BB.**    “Pay Periods” means the number of full pay periods that PAGA Employees  
23 worked in California for Defendants in a non-exempt or hourly position during the PAGA  
24 Period, exclusive of vacation, breaks in service, or leaves of absence.

25          **CC.**    “Qualified Settlement Account” means the account established by the Settlement  
26 Administrator pursuant to Internal Revenue Code section 1.468B-1.

27          **DD.**    “Released Parties” means Defendants, and each of their respective past, present,  
28 and future agents, employees, servants, officers, directors, partners, trustees, representatives,

1 shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related  
2 companies/corporations and/or partnerships (defined as a company/corporation and/or  
3 partnership that is, directly or indirectly, under common control with Defendants or any of its  
4 parents and/or affiliates, including but not limited to, Draexlmaier Automotive Technologies of  
5 America LLC), divisions, assigns, predecessors, successors, insurers, consultants, joint ventures,  
6 any actual or alleged joint employers, affiliates, and alter-egos, and all of their respective past,  
7 present, and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries,  
8 parents, subsidiaries, and assigns.

9 **EE.** “Settlement Administration Costs” means the costs payable from the Gross  
10 Settlement Amount, subject to Court approval, to the Settlement Administrator for administering  
11 the Settlement, including, but not limited to, the Settlement Administrator’s responsibilities  
12 outlined in this Settlement Agreement, and which shall not exceed Twelve Thousand Fifty  
13 Dollars (\$12,050). Defendants shall not oppose or otherwise object to any request made  
14 consistent with this paragraph.

15 **FF.** “Settlement Administrator” means ILYM, whom the Parties mutually agree shall  
16 be responsible for the administration of the Settlement, distribution of any amounts owed under  
17 this Settlement, and matters necessarily related thereto, pursuant to the terms of this Settlement  
18 Agreement.

19 **GG.** “Settlement Class” means a conditionally-certified class consisting of Settlement  
20 Class Members.

21 **HH.** “Settlement Class Member” means any Class Member who does not submit a  
22 timely and valid Request for Exclusion from the Settlement Class.

23 **II.** “Settlement Period” means the time period beginning May 11, 2016 through June  
24 26, 2021.

25 **JJ.** “Workweeks” means the number of full work weeks that Class Member worked  
26 in California for Defendants in a non-exempt or hourly position during the Settlement Period,  
27 exclusive of vacation, breaks in service, or leaves of absence.  
28

1 **II. RECITALS**

2 **A. Background and Procedural History**

3 1. On May 11, 2020, Plaintiff Corey Jones filed in the Superior Court of  
4 California, County of Alameda, a representative action Complaint for Penalties against  
5 Defendant DAA Draexlmaier Automotive of America, LLC, pursuant to California Labor Code  
6 § 2699(f) and for Violations of Labor Code §§ 201-202, 226(a), 226.7, 246, 510, 512 and 1194,  
7 and pursuant to Labor Code § 2699(a) for violations of Labor Code §226.3. (Alameda County  
8 case number HG20062125).

9 2. On August 24, 2020, Plaintiff Demetreia Gray filed in the Superior Court  
10 of California, County of Alameda, a class action and PAGA action Complaint against Defendant  
11 DAA Draexlmaier Automotive of America, LLC, alleging causes of action for: (1) failure to  
12 provide meal periods (Labor Code §§ 226.7 and 512; IWC Wage Order No. 1-2001 § 11); (2)  
13 failure to authorize and permit rest periods (Labor Code §§ 226.7; IWC Wage Order No. 1-2001  
14 § 12); (3) failure to pay minimum wages (Labor Code §§ 1194, 1197; IWC Wage Order No. 1-  
15 2001 § 4); (4) failure to pay overtime wages (Labor Code §§ 510, 1194, 1198; IWC Wage Order  
16 No. 1-2001 § 3); (5) failure to pay all wages due to discharged and quitting employees (Labor  
17 Code §§ 201-203); (6) failure to maintain required records (Labor Code §§ 226, 1174; IWC  
18 Wage Order No. 1-2001 § 7); (7) failure to furnish accurate itemized wage statements (Labor  
19 Code § 226; IWC Wage Order No. 1-2001 § 7); (8) unfair and unlawful business practices  
20 (Business & Professions Code §§ 17200, et seq.); (9) representative action for penalties under  
21 the PAGA. (Alameda County case number HG20072329).

22 3. On September 3, 2020, Plaintiff Eddie Fairley filed in the Superior Court  
23 of California, County of Alameda, a class action and PAGA action Complaint against  
24 Defendants DAA Draexlmaier of America LLC, and DAN Draexlmaier Automotive North  
25 America LLC, alleging causes of action for: (1) failure to pay overtime wages (Labor Code §§  
26 510 and 1198); (2) failure to provide meal breaks (Labor Code §§ 226.7 and 512(a)) ; (3) failure  
27 to provide rest periods (Labor Code § 226.7); (4) failure to pay minimum wages (Labor Code §§  
28 1194, 1197, and 1197.1); (5) failure to timely pay wages (Labor Code §§ 201 and 202); (6)

1 failure to timely pay wages during employment (Labor Code §§ 204); (7) failure to provide  
2 accurate itemized wage statements (Labor Code §§ 226(a)); (8) failure to keep requisite payroll  
3 records (Labor Code §§ 1174); (9) failure to reimburse for business expenses (Labor Code §§  
4 2800 and 2802); (10) unfair competition (Business & Professions Code §§ 17200, et seq.); and  
5 (11) Violation of the California Labor Code section 2698, et seq. (PAGA). (Alameda County  
6 case number RG20073122).

7 4. On April 20, 2021, Defendants and Named Plaintiffs attended a full-day  
8 mediation with mediator Hon. Louis M. Meisinger (Ret.), but were not able to reach a settlement  
9 on that date. The Hon. Louis M. Meisinger provided a mediator's proposal on that date, and the  
10 Parties accepted the mediator's proposal on April 27, 2021.

11 **B.** Throughout the pendency of the Lawsuits, the Parties informally exchanged  
12 documents and information for settlement purposes in connection with the April 20, 2021  
13 mediation. Pursuant to a material term of the Hon. Louis M. Meisinger's mediation proposal,  
14 the Parties further engaged in confirmatory discovery as to the merits of the Lawsuits and the  
15 class size. Based on a thorough investigation and evaluation of these matters, Class Counsel and  
16 Named Plaintiffs have concluded that the Settlement with Defendants for the consideration and  
17 on the terms set forth in this Agreement, is fair, reasonable, adequate, and is in the best interest  
18 of the Employees in light of all known facts and circumstances, including the risk of significant  
19 delay, and the defenses asserted by Defendants.

20 **C.** Named Plaintiffs have fully investigated the factual and legal bases for the causes  
21 of action asserted in the Lawsuits. As a result of their investigation, Named Plaintiffs continue  
22 to believe their claims are viable and that Defendants violated the California Labor Code or any  
23 IWC Wage Order. Defendants have denied all allegations and contend that the claims asserted  
24 in the Lawsuits have no merit and cannot give rise to liability on behalf of Defendants. Given  
25 the disagreement between the Parties as to the viability of these claims, the Parties believe the  
26 Settlement provided for herein is a fair, adequate, and reasonable settlement.

27 **D.** Named Plaintiffs recognize the expense and length of continued proceedings  
28 necessary to continue the litigation against Defendants through trial and through any possible



1 appeals. Named Plaintiffs have also taken into account the uncertainty and risk of the outcome  
2 of further litigation, and the difficulties and delays inherent in such litigation. Named Plaintiffs  
3 are also aware of the burdens of proof necessary to establish liability for the claims asserted in  
4 the Lawsuits, Defendants' defenses thereto, and the difficulties in establishing damages and  
5 entitlement to monetary recovery for Employees. Named Plaintiffs have also taken into account  
6 the discovery undertaken and settlement negotiations conducted, which negotiations resulted in  
7 the material settlement terms set forth herein. Based on the foregoing, Named Plaintiffs have  
8 determined that the Settlement set forth in this Settlement Agreement is a fair, adequate, and  
9 reasonable settlement, and is in the best interests of Employees.

10 **E.** Defendants have concluded that any further defense of this litigation would be  
11 protracted and expensive for all Parties. Defendants have devoted substantial amounts of time,  
12 energy and resources to the defense of the claims asserted in the Lawsuits and, unless this  
13 Settlement is made, will continue to do so for the foreseeable future. For these reasons,  
14 Defendants have agreed to settle the matter upon the terms set forth in this Settlement  
15 Agreement, to put to rest the claims as set forth in the Lawsuits.

16 **F.** Defendants have denied and continue to deny each of the claims and contentions  
17 alleged in the Lawsuits. Defendants have repeatedly asserted and continue to assert defenses  
18 thereto, and have expressly denied and continue to deny any wrongdoing or legal liability arising  
19 out of any of the facts or conduct alleged in the Lawsuits. Defendants also have denied and  
20 continue to deny, *inter alia*, the allegations that Employees have suffered damages; that  
21 Defendants improperly failed to pay Employees all wages owed; that Defendants failed to pay  
22 minimum wages; that Defendants failed to pay all overtime; that Defendants failed to properly  
23 provide meal and rest periods; that Defendants provided Employees with inaccurate wage  
24 statements; that Defendants failed to timely pay all wages due during employment or at the  
25 separation of employment; that Defendants failed to properly pay sick time; that Defendants  
26 failed to pay wages twice per calendar month; that Defendants failed to reimburse business  
27 expenses; that Defendants failed to maintain requisite payroll records; that Defendants violated  
28 any provisions of the California Labor Code or any IWC Wage Order; that Defendants engaged

1 in any unlawful, unfair or fraudulent business practices; that Defendants engaged in any other  
2 wrongful conduct as alleged in the Lawsuits; or that Employees were harmed by the conduct  
3 alleged in the Lawsuits. Neither this Settlement Agreement, nor any document referred to or  
4 contemplated herein, nor any action taken to carry out this Settlement Agreement, is, may be  
5 construed as, or may be used as an admission, concession or indication by or against Defendants  
6 of any fault, wrongdoing, or liability whatsoever.

7 **G.** Named Plaintiffs claim and continue to claim that the claims released by this  
8 Settlement Agreement have merit and give rise to liability on the part of Defendants. Neither  
9 this Settlement Agreement nor any documents referred to herein, or any action taken to carry out  
10 this Settlement Agreement is or may be construed as or may be used as an admission by or  
11 against Employees or Class Counsel as to class suitability and/or the merits or lack thereof of the  
12 claims asserted.

13 **I.** The Parties stipulate, subject to the approval of the Court, that the Lawsuits are  
14 being compromised and settled pursuant to the terms and conditions set forth in this Settlement  
15 Agreement.

### 16 **III. SETTLEMENT TERMS**

17 **A. Cooperation.** The Parties will cooperate in obtaining through an unopposed  
18 motion to be filed as soon as possible, an order from the Court preliminarily approving this  
19 Settlement and granting leave to file a First Amended and Consolidated Class Action and PAGA  
20 Complaint to implement this Settlement. The Parties further agree to fully cooperate in the  
21 drafting and/or filing of any further documents or filings reasonably necessary to be prepared or  
22 filed, shall take all steps that may be requested by the Court relating to, or that are otherwise  
23 necessary to the approval and implementation of this Agreement and shall otherwise use their  
24 respective best efforts to obtain the Court's certification of the Class for purposes of this  
25 Settlement, as well as Court approval of and implementation of this Agreement.

26 **B. Amendment of Operative Complaint.** As part of this Settlement Agreement,  
27 and in connection with the preliminary approval of this Settlement, Named Plaintiffs and  
28 Defendants stipulate to the filing of a First Amended and Consolidated Class Action and PAGA

1 Complaint, that includes all claims from the Lawsuits, in the Jones Action, which shall be  
2 designated as the lead case. A copy of the First Amended and Consolidated Class Action and  
3 PAGA Complaint is attached hereto as **Exhibit 1**. Defendants agree to consolidation of the  
4 Jones Action, Gray Action, and Fairley Action for the purposes of Settlement only. Defendants  
5 shall not be required to file any response to the First Amended and Consolidated Class Action  
6 and PAGA Complaint and Defendants' current operative answers in the Jones Action, Gray  
7 Action, and Fairley Action shall be deemed the answer to the First Amended and Consolidated  
8 Class Action and PAGA Complaint. If, for any reason, the Settlement is not approved by the  
9 Court, the Stipulation to file the First Amended and Consolidated Class Action and PAGA  
10 Complaint will have no force or effect.

11 **C. Funding and Allocation of Settlement**

12 1. Settlement Accounting. No more than ten (10) days after the Effective  
13 Date, or reasonable time thereafter, the Settlement Administrator will provide the Parties with an  
14 accounting of all anticipated payments to be issued from the Qualified Settlement Account,  
15 including: (a) Class Member Payments to Settlement Class Members, (b) the PAGA Amount  
16 (separated as payments to the LWDA and the Individual PAGA Payments to PAGA  
17 Employees); (c) the Named Plaintiff Enhancement Payments; (d) the Class Counsel Fees Award  
18 and Class Counsel Costs Award to Class Counsel, and (f) Settlement Administration Costs to the  
19 Settlement Administrator, all as specified in this Settlement Agreement and approved by the  
20 Court ("Settlement Accounting").

21 2. Funding the Settlement. Within twenty one (21) days after receipt of the  
22 Settlement Accounting from the Settlement Administrator, and solely for purposes of this  
23 Settlement, Defendants shall wire the Gross Settlement Amount and all associated employer  
24 payroll taxes into the Qualified Settlement Account, for distribution in accordance with the  
25 terms of this Settlement Agreement (the "Funding"). At no time shall Defendants have the  
26 obligation to segregate the funds comprising the Gross Settlement Amount from other assets and  
27 will retain exclusive authority over, and responsibility for, those funds until the Funding.  
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2 **D. Payments from the Gross Settlement Amount.**

3 1. Named Plaintiff Enhancement Payments. The Settlement Administrator  
4 shall pay from the Qualified Settlement Account any Named Plaintiff Enhancement Payments  
5 within fourteen (14) days of the Funding by check or wire to an account designated by Class  
6 Counsel. Named Plaintiffs agree to provide the Settlement Administrator (and not Defendants)  
7 with an executed IRS Form W-9 within five (5) days after the Funding and before the Named  
8 Plaintiff Enhancement Payments are issued. The Settlement Administrator shall issue an IRS  
9 Form 1099 to Named Plaintiffs for these payments. Named Plaintiffs shall be solely and legally  
10 responsible for paying any and all applicable taxes on their Named Plaintiff Enhancement  
11 Payments and shall indemnify, defend, and hold Defendants harmless from any claim or liability  
12 for taxes, penalties, or interest arising as a result of the Named Plaintiff Enhancement Payments.  
13 The Named Plaintiff Enhancement Payments shall be in addition to any Class Member  
14 Payments or Individual PAGA Payments the Named Plaintiffs receive as Settlement Class  
15 Members and/or PAGA Employees. If the Court awards Named Plaintiff Enhancement  
16 Payments in less than the amount(s) agreed upon in this Agreement, the unawarded amount(s)  
17 shall remain in the Class Payout Fund and be distributed to Settlement Class Members.

18 2. Class Counsels' Attorneys' Fees and Costs. Class Counsel will request  
19 Class Counsel Fees Award of up to thirty-five percent (35%) of the Gross Settlement Amount,  
20 projected to be Five Hundred Sixteen Thousand, Two Hundred Fifty Dollars (\$516,250.00), and  
21 will seek a Class Counsel Costs Award for reimbursement of Class Counsel's actual out-of-  
22 pocket costs and expenses incurred pursuing the Lawsuits, not to exceed Sixty Thousand Dollars  
23 (\$60,000). Class Counsel shall submit a declaration to the Court detailing the costs incurred  
24 and/or expected to be incurred in the Lawsuits. Class Counsel shall be solely responsible for the  
25 division and distribution of any and all court-approved Class Counsel Fees Award and Class  
26 Counsel Costs Award.

27 a. The Settlement Administrator shall pay to Class Counsel any Class  
28 Counsel Fees Award or Class Counsel Costs Award within fourteen (14) days of the Funding,

1 either by check or by wire to an account designated by Class Counsel. Class Counsel agrees to  
2 provide the Settlement Administrator (and not Defendants) with executed IRS Forms W-9  
3 within five (5) business days after the Funding Date and before payments of the Class Counsel  
4 Fees Award and Costs Award are issued. The Settlement Administrator shall issue IRS Forms  
5 1099 to Class Counsel for the payments made pursuant to this section. Class Counsel shall be  
6 solely and legally responsible for paying any and all applicable taxes on the respective portion of  
7 the Class Counsel Fees Award and Class Counsel Costs Award and shall indemnify, defend, and  
8 hold Defendants harmless from any claim or liability for taxes, penalties or interest arising as a  
9 result of any payments received by Class Counsel pursuant to this Agreement. If the Court  
10 awards a Class Counsel Fees Award and/or a Class Counsel Costs Award in an amount that is  
11 less than the amount provided under this Settlement, the unawarded amounts shall remain in the  
12 Class Payout Fund and be distributed to Settlement Class Members. This Settlement is not  
13 contingent upon the Court awarding Class Counsel any particular amount of Class Counsel Fees  
14 Award or Class Counsel Costs Award.

15                   b.       The Named Plaintiffs have all agreed in writing to a fee sharing  
16 agreement among Class Counsel, that provides for the following distribution of attorneys' fees:  
17 one-third to Lawyers *for* Justice, PC, one-third to Matern Law Group PC, and one-third to  
18 Gaines & Gaines, APLC.

19                   c.       Neither Class Counsel nor any other current or past counsel for  
20 Named Plaintiffs shall be permitted to petition the Court for, or accept, any additional payments  
21 for fees, costs, or interest, and the Class Counsel Fees Award and Class Counsel Costs Award  
22 approved by the Court contemplated by this Agreement shall be for all claims for attorneys' fees  
23 and costs whenever incurred, including past and present fees and costs incurred in the Lawsuits  
24 to date and through and including the Effective Date, as well as final distribution of all payments  
25 under this Settlement Agreement and through and after final judgment. The Funding shall  
26 constitute full satisfaction of the obligation to pay any amounts to any person, attorney or law  
27 firm for attorneys' fees, expenses or costs in the Lawsuits incurred by any attorney on behalf of  
28 Named Plaintiffs and/or any of the Employees, and shall relieve Defendants and Defendants'

1 Counsel of any other claims or liability to any other attorney or law firm for any attorneys' fees,  
2 expenses and/or costs to which any of them may claim to be entitled on behalf of Named  
3 Plaintiffs and/or the Employees in connection with the claims released in this Settlement.

4 Further, payment of the Class Counsel Fees Award and Class Counsel Costs Award to Class  
5 Counsel as set forth herein shall relieve the Employees, the Settlement Administrator, and the  
6 Qualified Settlement Account of any other claims or liability to any other attorney or law firm  
7 for any attorneys' fees, expenses and/or costs to which any of them may claim to be entitled on  
8 behalf of Named Plaintiffs and/or the Employees in connection with the claims released in this  
9 Settlement.

10           3.     PAGA Amount. The PAGA Amount is One Hundred Twenty Thousand  
11 Dollars (\$120,000.00), which the Parties have agreed is to be paid in settlement of all PAGA  
12 claims released in this Settlement Agreement, which shall be allocated as follows:

13                     a.     Within fourteen (14) days of the Funding, the Settlement  
14 Administrator shall pay from the Qualified Settlement Account Ninety Thousand Dollars  
15 (\$90,000.00) to the LWDA ("LWDA Payment"). This amount is seventy-five percent (75%) of  
16 the One Hundred Twenty Thousand Dollars (\$120,000.00) PAGA Amount.

17                     b.     The remaining twenty-five percent (25%) of the PAGA Amount,  
18 Thirty Thousand Dollars (\$30,000.00), shall be distributed to all PAGA Employees, with each  
19 receiving a *pro rata* share based on the number of Pay Periods worked during the PAGA Period.  
20 To establish the Pay Period Value (as defined below), the Settlement Administrator will first  
21 determine the total number of Pay Periods worked by the PAGA Employees during the PAGA  
22 Period. The "Pay Period Value" means 25% of the PAGA Amount divided by the total number  
23 of Pay Periods worked by PAGA Employees during the PAGA Period. The Pay Period Value  
24 will be rounded to the nearest cent. The amount of the Individual PAGA Payment to be paid to  
25 each PAGA Employee will be determined by multiplying the Pay Period Value by the total  
26 number of Pay Periods each Employee worked during the PAGA Period. There is no need for a  
27 PAGA Employee to submit a claim form in order to be eligible for and to receive an Individual  
28 PAGA Payment.

1 c. The portion of the PAGA Amount paid to the PAGA Employees  
2 shall be treated entirely as penalties. If for any reason additional funds are allocated to the  
3 PAGA Amount, such monies shall be drawn from other amounts in this Settlement with the  
4 other components of the Gross Settlement Amount being reduced proportionately, excluding the  
5 Class Counsel Fees Award and the Class Payout Fund, but the Gross Settlement Amount will  
6 not exceed One Million, Four Hundred Seventy-Five Thousand Dollars (\$1,475,000.00).

7 4. Settlement Administration Costs. The Settlement Administrator shall pay  
8 from the Qualified Settlement Account the Court-approved Settlement Administration Costs,  
9 within fourteen (14) days of the Funding, in an amount not to exceed Twelve Thousand Fifty  
10 (\$12,050).

11 5. Calculation of Class Member Payments. All Settlement Class Members  
12 will receive a Class Member Payment, paid from the Class Payout Fund. The amount of each  
13 Class Member Payment will be calculated on a *pro rata* basis, based on the number of  
14 Workweeks each Settlement Class Member worked during the Settlement Period. To establish  
15 the Workweek Value (as defined below), the Settlement Administrator will first determine the  
16 total number of Workweeks worked by the Settlement Class Members during the Settlement  
17 Period. The "Workweek Value" means the Class Payout Fund divided by the total number of  
18 Workweeks worked by Settlement Class Members during the Settlement Period. The  
19 Workweek Value will be rounded to the nearest cent. The Class Member Payment to each  
20 Settlement Class Member will be determined by multiplying the Workweek Value by the total  
21 number of Workweeks each Settlement Class Member worked during the Settlement Period.  
22 The total of all Class Member Payments to all Settlement Class Members shall equal the Class  
23 Payout Fund. There is no need for a Settlement Class Member to submit a claim form in order  
24 to be eligible for and to receive a Class Member Payment. Class Member Payments will be  
25 reduced by any required deductions for each Settlement Class Member, including employee-side  
26 tax withholdings and/or deductions.

1                   6.     Method and Timing of Payments to Settlement Class Members and PAGA  
2 Employees.

3                   a.     Class Member Payments and the Individual PAGA Payments will  
4 be mailed to the Employees' last known address contained in the Employee List (subject to  
5 address update by skip-trace search conducted prior to the mailing of the Class Notice, and any  
6 other address update that occurs thereafter), by First Class U.S. Mail within fourteen (14)  
7 calendar days following the Funding Date.

8                   b.     Checks paid to Settlement Class Members and PAGA Employees  
9 shall remain valid and negotiable for one-hundred eighty (180) calendar days from the date of  
10 their issuance. After one-hundred eighty (180) calendar days from the date of mailing, the  
11 checks shall become null and void, and any monies remaining in the distribution account shall  
12 be distributed to the Controller of the State of California to be held pursuant to the Unclaimed  
13 Property Law, California Civil Code § 1500 et seq., for the benefit of those Settlement Class  
14 Members and PAGA Employees who did not cash their checks until such time that they claim  
15 their property. The Parties agree that this disposition results in no "unpaid residue" under  
16 California Civil Procedure Code § 384, as the entire Class Payout Fund will be paid out to Class  
17 Members, whether or not they all cash their Class Member Payments. Therefore, no interest will  
18 be due on said amount.

19                   7.     No Effect on Employee Benefits. The Named Plaintiff Enhancement  
20 Awards, Class Member Payments, and Individual PAGA Payments paid to Named Plaintiffs,  
21 Settlement Class Members, and PAGA Employees shall be deemed not to be pensionable  
22 earnings and shall not have any effect on the eligibility for, or calculation of, any employee  
23 benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the respective Named Plaintiffs,  
24 Employees, or Settlement Class Members. The Parties agree that any Named Plaintiff  
25 Enhancement Awards, Class Member Payments, and Individual PAGA Payments paid to Named  
26 Plaintiffs, Settlement Class Members, and PAGA Employees under the terms of this Settlement  
27 Agreement do not represent any modification of Named Plaintiffs', Settlement Class Members',  
28 or PAGA Employees' previously credited hours of service or other eligibility criteria under any



1 employee pension benefit plan or employee welfare benefit plan sponsored by Defendants.  
2 Further, any Named Plaintiff Enhancement Awards, Class Member Payments, or Individual  
3 PAGA Payments shall not be considered “compensation” in any year for purposes of  
4 determining eligibility for, or benefit accrual within, an employee pension benefit plan or  
5 employee welfare benefit plan sponsored by Defendants.

6 **E. Taxation**

7 1. Tax Treatment of Class Member Payments. Each Class Member Payment  
8 shall be allocated between taxable and non-taxable consideration as follows: Fifty Percent (50%)  
9 will be allocated to alleged unpaid wages (subject to employer-side taxes paid separately by  
10 Defendant) for which an IRS Form W-2 will issue, and Fifty Percent (50%) will be allocated to  
11 alleged penalties, reimbursement, and interest for which an IRS Form 1099 will issue, if  
12 required by law. The Settlement Administrator will be responsible for calculating the employe-  
13 side taxes owed on the wage portion of each Class Member Payment and paying these amounts  
14 to the appropriate state and federal agencies, within the timing required by applicable state and  
15 federal law. Each Settlement Class Member shall be responsible for paying any employee-side  
16 taxes due on his or her settlement. The Settlement Administrator will also be responsible for  
17 calculating the employer’s share of withholdings and taxes, including without limitation  
18 statutory Federal and California payroll and employment taxes arising from wage payments to  
19 Settlement Class Members under this Agreement. Defendants shall be responsible for paying  
20 any employer-side taxes in addition to the Class Payout Fund. Notwithstanding the treatment of  
21 the Class Payout Fund, none of the payments called for by this agreement are to be treated as  
22 earnings or wages for any purpose under any of Defendants’ benefit plans.

23 2. Tax Treatment of PAGA Payments. The Individual PAGA Payment  
24 distributed to each PAGA Employee will be treated entirely as civil penalties, and will be  
25 reported as such to each PAGA Employee on an IRS Form 1099 (if required).

26 3. Employer’s Share of Withholdings and Taxes. The employer’s share of  
27 withholding and taxes, including without limitation statutory Federal and California payroll and  
28 employment taxes arising from wage payments to Settlement Class Members under this

1 Agreement, shall be paid by Defendants in addition to, and not out of, the Gross Settlement  
2 Amount.

3 4. Tax Liability. The Parties make no representation as to the tax treatment  
4 or legal effect of the payments called for hereunder, and the Parties, Settlement Class Members,  
5 and PAGA Employees are not relying on any statement, representation, or calculation by any of  
6 the Parties or by the Settlement Administrator in this regard. Named Plaintiffs, Settlement Class  
7 Members, and PAGA Employees understand and agree that except for the employer's portion of  
8 any payroll taxes, Named Plaintiffs, Settlement Class Members, and PAGA Employees will be  
9 solely responsible for all tax reporting obligations and agree to pay all local, state and federal  
10 income taxes, penalties, interest, fines or other assessments incurred or owed, if any, in  
11 connection with the payments described herein. Named Plaintiffs, Settlement Class Members,  
12 and PAGA Employees agree to indemnify and hold Defendants, the Released Parties,  
13 Defendants' Counsel, Class Counsel, and the Settlement Administrator free and harmless from  
14 and against any liabilities, assessment of taxes, penalties, interests, fines, costs and expenses,  
15 including attorneys' fees, arising out of their failure to pay taxes due on payments received as a  
16 result of this Settlement Agreement. Each Party to this Settlement Agreement (for purposes of  
17 this section, the "acknowledging party" and each party to this agreement other than the  
18 acknowledging party, an "other party") acknowledges and agrees that (1) no provision of this  
19 Settlement Agreement, and no written communication or disclosure between or among the  
20 Parties or their attorneys and other advisers, is or was intended to be, nor shall any such  
21 communication or disclosure constitute or be construed or be relied upon as, tax advice within  
22 the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as  
23 amended); (2) the acknowledging party (a) has relied exclusively upon their own, independent  
24 legal counsel for advice in connection with this Settlement Agreement, (b) has not entered into  
25 this Settlement Agreement based upon the recommendation of any other Party or any attorney or  
26 advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure  
27 by any attorney or adviser to any other Party to avoid any tax penalty that may be imposed on  
28 the acknowledging party; and (3) no attorney or adviser to any other Party has imposed any

1 limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies  
2 (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging  
3 party of the tax treatment or tax structure of any transaction, including any transaction  
4 contemplated by this Settlement Agreement.

5  
6 **F. Conditional Certification**

7 For the purposes of this Settlement Agreement only, the Parties agree to the certification  
8 of the Settlement Class. If, for any reason, the Settlement Agreement is not approved, the  
9 stipulation to certification will be void. Should the Settlement Agreement not become final, for  
10 whatever reason, the fact that the Parties were willing to stipulate to class certification as part of  
11 the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue  
12 of whether a class should be certified in a non-settlement context in the Lawsuits, and shall have  
13 no bearing on, and shall not be admissible in connection with, the issue of whether a class  
14 should be certified in any other lawsuit.

15 **G. No Injunctive Relief**

16 As part of this Settlement, Defendants shall not be required to enter into any consent  
17 decree, nor shall Defendants be required to agree to any provision for injunctive relief, or to  
18 modify or eliminate any of its personnel, compensation, or payroll practices or policies, or adopt  
19 any new personnel, compensation, or payroll practices or policies.

20 **H. Release of Claims**

21 1. Class Member Release. As of the Effective Date, and subject to  
22 Defendants’ payment of all sums required by this Settlement Agreement, all Settlement Class  
23 Members fully and finally release the Released Parties from any and all Settlement Class  
24 Release Claims. “Settlement Class Release Claim” include any and all claims alleged in the  
25 Lawsuit, all claims arising from or related to the facts, theories, or claims alleged in the Lawsuit,  
26 and any claims which could have been asserted in the Lawsuit arising from the alleged facts,  
27 claims, theories, and/or primary rights alleged to have been invaded to the fullest extent  
28

1 permitted by law, that arose during the Settlement Period while a Settlement Class Member was  
2 classified by DAA as non-exempt, including, but not limited to:

3 a. unpaid wages, including, but not limited to, failure to pay  
4 minimum wages, straight time compensation, overtime compensation, double-time  
5 compensation, vacation or paid time off, reporting time compensation, for time spent donning  
6 and doffing work uniforms, for time spent waiting for and/or undergoing security checks, and to  
7 pay any such compensation at the regular rate of compensation, and/or interest; for missed, late,  
8 short or interrupted meal and/or rest periods or any allegation that meal or rest periods were not  
9 provided, including any claim for any alleged failure to pay premiums for missed, late, short or  
10 interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation; for  
11 reimbursement for business expenses or any other claim that Defendants allowed or required  
12 employees to bear any of the costs associated with the operation of Defendants' business,  
13 including without limitation the use of personal cell phones, tools, remote working expenses,  
14 and electrical or other costs incurred in charging company property; for inaccurate or otherwise  
15 improper wage statements and/or failure to keep or maintain accurate records; for secret  
16 underpayment of wages; for failure to pay sick leave, including that sick leave was calculated at  
17 an incorrect rate of pay; for unfair business practices arising out of or related to any or all of the  
18 aforementioned claims; for penalties arising out of or related to any or all of the aforementioned  
19 claims, including, but not limited to, recordkeeping penalties, wage statement penalties,  
20 minimum-wage penalties, and waiting-time penalties; and for attorneys' fees and costs; and

21 b. any and all claims related to violations of the Wage Orders of the  
22 California Industrial Welfare Commission; and/or alleging a violation of the California Labor  
23 Code, including, but not limited to §§ 200, 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 222.5,  
24 223, 226, 226.3, 226.7, 226.8, 227.3, 246, 246.5, 510, 511, 512, 551, 552, 558, 1174, 1174.5,  
25 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800, 2802, and derivative  
26 claims under California Business & Professions Code Sections 17200 *et seq.*

27 2. Release of PAGA Claims. As of the Effective Date, and subject to  
28 Defendants' payment of all sums required by this Settlement Agreement, the State of California

1 and PAGA Employees, fully and finally release the Released Parties from any and all PAGA  
2 Released Claims. “PAGA Released Claims” are all claims under the PAGA associated with any  
3 and all claims under PAGA arising from or related to the facts, theories, or claims alleged in the  
4 Lawsuit, including but not limited to, claims under the Private Attorneys General Act,  
5 California Labor Code § 2698, *et seq.*, that arose during employment by Defendants in  
6 California in non-exempt or hourly-paid positions during the PAGA Period for:

7 a. civil penalties for unpaid wages, including, but not limited to,  
8 failure to pay minimum wages, straight time compensation, overtime compensation, double-time  
9 compensation, vacation or paid time off, reporting time compensation, for time spent donning  
10 and doffing work uniforms, for time spent waiting for and/or undergoing security checks, and to  
11 pay any such compensation at the regular rate of compensation, and/or interest; for missed, late,  
12 short or interrupted meal and/or rest periods or any allegation that meal or rest periods were not  
13 provided, including any claim for any alleged failure to pay premiums for missed, late, short or  
14 interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation; for  
15 reimbursement for business expenses or any other claim that Defendants allowed or required  
16 employees to bear any of the costs associated with the operation of Defendants’ business,  
17 including without limitation the use of personal cell phones, tools, remote working expenses,  
18 and electrical or other costs incurred in charging company property; for inaccurate or otherwise  
19 improper wage statements and/or failure to keep or maintain accurate records; for secret  
20 underpayment of wages; for failure to pay sick leave, including that sick leave was calculated at  
21 an incorrect rate of pay; for unfair business practices arising out of or related to any or all of the  
22 aforementioned claims; for penalties arising out of or related to any or all of the aforementioned  
23 claims, including, but not limited to, recordkeeping penalties, wage statement penalties,  
24 minimum-wage penalties, and waiting-time penalties; and for attorneys’ fees and costs. the  
25 claims released by the PAGA Aggrieved Employees also include any and all claims under the  
26 California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* that arise out of  
27 or arise in connection with the claims and facts alleged in the Lawsuit, and any claims which  
28

1 could have been asserted in the Lawsuit arising from the alleged facts, theories, and/or primary  
2 rights alleged to have been invaded to the fullest extent permitted by law; and

3           b.       any and all claims under the PAGA related to violations of the  
4 Wage Orders of the California Industrial Welfare Commission; and/or alleging a violation of  
5 California Labor Code, including, but not limited to §§ 200, 201, 201.3, 202, 203, 204, 210,  
6 218.5, 218.6, 222.5, 223, 226, 226.3, 226.7, 226.8, 227.3, 246, 246.5, 510, 511, 512, 551, 552,  
7 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800, and  
8 2802.

9           3.       General Release By Named Plaintiffs Only. As of the Effective Date, in  
10 addition to releasing the Settlement Released Claims and the PAGA Released Claims, Named  
11 Plaintiffs fully and finally release the Released Parties from Named Plaintiffs' Released Claims.  
12 "Named Plaintiffs' Released Claims" are any and all claims, known and unknown, under  
13 federal, state and/or local law, statute, ordinance, regulation, common law, or other source of  
14 law, including but not limited to claims arising from or related to Named Plaintiffs' employment  
15 with Defendants and/or the termination of Named Plaintiffs' employment, including but not  
16 limited to:

17           a.       all claims asserted in, arising from, or related in any way to the  
18 Lawsuits, including without limitation any and all claims that could have been asserted as part of  
19 the Lawsuits based on the facts alleged;

20           b.       any and all claims for violation of the National Labor Relations  
21 Act (NLRA) (to the extent permitted by law), Title VII of the Civil Rights Act (Title VII), the  
22 Americans With Disabilities Act of 1990 (ADA), the Age Discrimination in Employment Act  
23 (ADEA), the Older Worker Benefit Protection Act (OWBPA), the Employee Retirement Income  
24 Security Act (excluding vested benefits) (ERISA); the Rehabilitation Act, the Occupational  
25 Safety and Health Act (OSHA) (federal and California), the Consolidated Omnibus Budget  
26 Reconciliation Act of 1985 (COBRA), the Families First Coronavirus Response Act (FFCRA),  
27 the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the  
28 California Family Rights Act (CFRA), the Worker Adjustment and Retraining Notification Act

1 (federal and California), the California Fair Employment and Housing Act (FEHA), the Unfair  
2 Business Practices Act/Unfair Competition Law (UCL); the California Labor Code, the  
3 California Government Code, the California Civil Code, the applicable California Wage  
4 Order(s), and the California Private Attorneys General Act (to the extent permitted by law) (all  
5 as amended);

6 c. any and all claims for discrimination or harassment on the basis of  
7 any protected status, such as race, color, ancestry, national origin (including language use  
8 restrictions), citizenship, religious creed (including religious dress and grooming practices), sex  
9 (which includes pregnancy, childbirth, breastfeeding and medical conditions related to  
10 pregnancy, childbirth or breastfeeding), marital status, domestic partnership status, sexual  
11 orientation, gender, gender identity or gender expression, veteran status, military status, political  
12 affiliation, family care or medical leave status or the denial of family and medical care leave,  
13 age, physical or mental disability (including HIV and AIDS), medical condition (including  
14 cancer and genetic characteristics), genetic information, or any other basis protected by  
15 applicable federal, state or local law, rule, ordinance or regulation;

16 d. any and all whistleblower or retaliation claims on the basis of any  
17 protected activity or other protected basis;

18 e. any and all claims for breach of any express or implied promise,  
19 contract or agreement (express or implied), or breach of the implied covenant of good faith and  
20 fair dealing; (e) any tort or common law claims, including wrongful discharge, intentional or  
21 negligent infliction of emotional distress, negligence, fraud, misrepresentation, defamation,  
22 interference with prospective economic advantage, or other tort or common law actions;

23 f. any and all claims for misclassification, wage and hour, or other  
24 claims related to hours, conditions, or compensation related to work; and

25 g. any and all claims for any other violation of local, state, or federal  
26 law, constitution, statute, regulation, ordinance, order, guidance, resolution, public policy,  
27 contract, or tort or common law claim, whether for legal or equitable relief, having any bearing  
28 whatsoever on the terms and conditions of employment, or association or working relationship,

1 with any of the Released Parties, including but not limited to any allegations for penalties,  
2 interest, costs and fees, including attorneys' fees.

3 h. Named Plaintiffs' Released Claims include all claims, whether  
4 known or unknown. Even if Named Plaintiffs discover facts in addition to or different from  
5 those that Named Plaintiffs now know or believe to be true with respect to the subject matter of  
6 Named Plaintiffs' Released Claims, those claims will remain released and forever barred. Thus,  
7 Named Plaintiffs expressly waive and relinquish the provisions, rights and benefits of section  
8 1542 of the California Civil Code, which reads:

9  
10 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
11 **THAT THE CREDITOR OR RELEASING PARTY DOES**  
12 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
13 **FAVOR AT THE TIME OF EXECUTING THE RELEASE**  
14 **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**  
15 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**  
16 **WITH THE DEBTOR OR RELEASED PARTY.**

17 Notwithstanding the foregoing, Named Plaintiffs do not waive or release any claim  
18 which cannot be waived or released by private agreement. Further, nothing in this Agreement  
19 shall prevent Named Plaintiffs from filing a charge or complaint with, or from participating in,  
20 an investigation or proceeding conducted by the SEC, OSHA, EEOC, DFEH, NLRB or any  
21 other federal, state or local agency charged with the enforcement of any employment or other  
22 applicable laws. Named Plaintiffs, however, understand that by signing this Agreement, they  
23 waive the right to recover any damages or to receive other relief in any claim or suit brought by  
24 or through the EEOC, the DFEH or any other state or local deferral agency on their behalf to the  
25 fullest extent permitted by law, but expressly excluding any monetary award or other relief  
26 available from the SEC/OSHA, including an SEC/OSHA whistleblower award, or other awards  
27 or relief that may not lawfully be waived.

28 4. Release of ADEA Claims. The general release of claims by Plaintiffs  
Fairley and Gray in Section III.H.3 of this Agreement includes a release of any claim Plaintiffs  
may have under the federal Older Workers Benefit Protection Act ("OWBPA") and/or the



1 federal Age Discrimination In Employment Act of 1967 (“ADEA”). By signing this Agreement,  
2 Plaintiffs Fairley and Gray acknowledge that:

3 a. Plaintiffs Fairley and Gray have had a full twenty-one (21) days  
4 within which to consider Section III.H.3 of this Agreement before executing it or have freely and  
5 knowingly waived the right to consider Section III.H.3 of this Agreement for a full twenty-one  
6 (21) days by executing the Agreement before the expiration of the twenty-one (21)-day period;

7 b. Plaintiffs Fairley and Gray and Defendants agree that any changes,  
8 whether material or immaterial, to Section III.H.3 of this Agreement, do not restart the running  
9 of the twenty-one (21)-day period;

10 c. Plaintiffs Fairley and Gray have carefully read and fully  
11 understand all provisions of Section III.H.3 of this Agreement;

12 d. Plaintiffs Fairley and Gray knowingly and voluntarily agree to all  
13 of the terms set forth in Section III.H.3 of this Agreement and agree to be legally bound by all of  
14 the terms set forth in Section III.H.3 of this Agreement;

15 e. Plaintiffs Fairley and Gray have been and hereby are advised in  
16 writing to consider the terms of Section III.H.3 of this Agreement and to consult with an  
17 attorney;

18 f. Prior to signing this Agreement, Plaintiffs Fairley and Gray have  
19 had the opportunity to consult with counsel of their choice concerning the terms and conditions  
20 of section III.H.3 of this Agreement and have done so or freely chosen not to do so;

21 g. Plaintiffs Fairley and Gray have a full seven (7) days following the  
22 execution of this Agreement to revoke Section III.H.3 of this Agreement. To revoke, they must  
23 deliver a written statement of revocation to Jennifer Redmond, Brian Fong, or Luis Arias at  
24 [jredmond@sheppardmullin.com](mailto:jredmond@sheppardmullin.com), [bfong@shppardmullin.com](mailto:bfong@shppardmullin.com), or [larias@sheppardmullin.com](mailto:larias@sheppardmullin.com),  
25 respectively, or at Four Embarcadero Center, 17th Floor, San Francisco, CA 94111 no later than  
26 midnight on the seventh (7<sup>th</sup>) day after they signed this Agreement. If Plaintiffs Fairley and  
27 Gray revoke within seven (7) days, they will not be entitled to their respective portions of the  
28 Named Plaintiff Enhancement Payments, and Section III.H.3 of this agreement shall be null and

1 void as to Plaintiffs Fairley and Gray only. If Plaintiffs Fairley and Gray do not exercise their  
2 right to revoke Section III.H.3 of this Agreement, then this Agreement shall become effective on  
3 the date immediately following the seven-day (7) revocation period described above; and

4 h. Plaintiffs Fairley and Gray expressly understand that among the  
5 various rights and claims being waived by Section III.H.3 of this Agreement are those arising  
6 under the Age Discrimination in Employment Act (ADEA) of 1967 (29 U.S.C. § 621, et seq.),  
7 but that any such claims that arise after the date of this Agreement are not waived. Although  
8 Plaintiffs Fairley and Gray are releasing claims that they may have under the Older Workers  
9 Benefit Protection Act (OWBPA) and ADEA, Plaintiffs Fairley and Gray understand that they  
10 may challenge the knowing and voluntary nature of their release in Section III.H.3 of this  
11 Agreement before a court, the Equal Employment Opportunity Commission (EEOC), NLRB, or  
12 any other federal, state or local agency charged with the enforcement of such employment laws.

13 5. Plaintiff Demetrea Gray's Claims in Federal Case Are Expressly  
14 Excluded. To the extent such claims are not Settlement Class Released Claims and/or PAGA  
15 Released Claims, Named Plaintiff Demetrea Gray's claims alleged in the lawsuit *Gray v. DAA*  
16 *Draexlmaier Automotive of America LLC*, pending in the United States District Court, Northern  
17 District of California, Case No. 20-cv-05790-JCS, are expressly excluded in their entirety from  
18 Named Plaintiff's Released Claims.

19 **I. Settlement Administrator Responsibilities**

20 1. The Settlement Administrator shall be responsible for preparing, printing,  
21 and mailing to the Employees the Notice of Proposed Settlement of Class Action attached as  
22 **Exhibit 2** hereto (the "Class Notice") as directed by the Court; calculating Class Member  
23 Payments and Individual PAGA Payments; calculating and withholding all required state and  
24 federal taxes owed by the Settlement Class Members and PAGA Employees and Defendants;  
25 keeping track of opt-outs and objections; drafting and mailing checks to Settlement Class  
26 Members and PAGA Employees; distributing Named Plaintiff Enhancement Payments, the  
27 Class Counsel Fees Award, the Class Counsel Costs Award, the LWDA Payment, and  
28 Settlement Administration Costs; providing weekly status reports to counsel for the Parties;

1 providing a due diligence declaration for submission to the Court prior to the Final Approval  
2 hearing; and for such other tasks as the Parties mutually agree or the Court orders the Settlement  
3 Administrator to perform. The Parties each represent they do not have any financial interest in  
4 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator  
5 that could create a conflict of interest.

6           2.     The Settlement Administrator shall determine, with input and assistance  
7 from Defendants' Counsel, the eligibility for, and the amounts of, Class Member Payments and  
8 Individual PAGA Payments.

9           3.     To the extent any tax returns must be filed for the Gross Settlement  
10 Amount pursuant to this Settlement Agreement, the Settlement Administrator shall cause to be  
11 timely and properly filed all informational and other tax returns, if any, necessary with respect to  
12 the Gross Settlement Amount. Such returns shall be consistent with this paragraph. Any  
13 expenses and/or costs incurred in connection with the operation and implementation of this  
14 paragraph (including, without limitation, reasonable expenses of tax attorneys, accountants or  
15 other designees retained by the Settlement Administrator as required for the preparation and  
16 filing of tax returns described in this paragraph) shall be treated as, and considered to be, a cost  
17 of administration of the Settlement and shall be paid from the Settlement Administration Costs.

18           4.     No person shall have any claim against Defendants, Defendants' Counsel,  
19 Named Plaintiffs, Plaintiffs, Class Counsel or the Settlement Administrator based on  
20 distributions and payments made in accordance with this Settlement Agreement.

21           **J.     Notice/Approval of Settlement and Settlement Implementation.** As part of  
22 this Settlement, the Parties agree to the following procedures for obtaining preliminary approval  
23 of the Settlement, notifying Employees, obtaining final Court approval of the Settlement, and  
24 processing the settlement payments:

25           1.     Preliminary Approval of Settlement

26           a.     Named Plaintiffs shall reserve a hearing with the Court for a  
27 motion for preliminary approval of the Settlement in the Lawsuits within fifteen (15) days of the  
28 execution of this Settlement Agreement, and shall file the motion no later than sixteen (16) court

1 days prior to the reserved hearing. Named Plaintiffs shall schedule the motion for hearing on the  
2 earliest date the Court has available that complies with notice requirements. Named Plaintiffs  
3 shall seek the entry of a Preliminary Approval Order for: (a) conditional certification of the  
4 Settlement Class for settlement purposes only, (b) Preliminary Approval of the proposed  
5 Settlement Agreement, (c) setting a date for a Final Approval hearing, and, if the Lawsuits have  
6 not already been consolidated by the filing of a First Amended and Consolidated Class Action  
7 and PAGA Complaint, (d) granting leave to file a First Amended and Consolidated Class Action  
8 and PAGA Complaint.

9                   b.       In conjunction with the Preliminary Approval hearing, Named  
10 Plaintiffs will submit this Settlement Agreement, which sets forth the terms of this Settlement,  
11 and will include proposed forms of all notices and other documents as attached hereto necessary  
12 to implement the Settlement. Simultaneous with the filing of the Settlement Agreement and  
13 solely for purposes of this Settlement, Named Plaintiffs will request the Court to enter the  
14 Preliminary Approval order (“Preliminary Approval Order” or “Order”) (in a form to be agreed  
15 upon by the Parties), preliminarily approving the Settlement, and setting a hearing date to  
16 determine final approval of the Settlement. The Order shall provide for notice of the Settlement  
17 and related matters to be sent to Employees as specified herein. Class Counsel will be  
18 responsible for drafting all documents necessary to obtain Preliminary Approval, subject to  
19 review and comment by Defendants’ counsel who shall be provided a minimum of five (5)  
20 calendar days advance notice to review.

21                   2.       LWDA Notice. Pursuant to the PAGA, concurrently with the filing of the  
22 motion for Preliminary Approval, Named Plaintiffs will, pursuant to California Labor Code §  
23 2699(l), submit the Settlement to the LWDA. The Parties intend and believe that the submission  
24 pursuant to the procedures described in this section complies with the requirements of the  
25 PAGA.

26                   3.       Notice to Class Members and PAGA Employees.

27                   a.       Delivery of the Employee List. Within twenty-one (21) days of  
28 entry of the preliminary approval order of this Settlement, Defendants will provide the

1 Employee List to the Settlement Administrator, which shall be used solely for the administration  
2 of this Settlement and for no other purpose, and shall not be shared with any persons or entity  
3 not employed by the Settlement Administrator and working on the administration of this  
4 Settlement. Because Employees' sensitive personal information is included in the Employee  
5 List, the Settlement Administrator shall maintain the Employee List securely and in confidence.  
6 Access to such Employee List shall be limited to employees of the Settlement Administrator  
7 with a need to use the Employee List for administration of the Settlement. In the event that the  
8 Settlement Agreement is not finally approved by the Court, or if it is in any way altered or  
9 disapproved on appeal, the Settlement Administrator shall not thereafter use the Employee List,  
10 and shall destroy any and all copies or versions of it (including any in electronic form).

11           b.     Notice By First-Class Mail. Within fifteen (15) days after receipt  
12 of the Employee List, the Settlement Administrator shall mail the Class Notice to Employees via  
13 first-class regular U.S. mail. Employees will have forty-five (45) days from the mailing of the  
14 Class Notice to request exclusion of or object to the Settlement ("Opt Out/Objection Period"),  
15 unless the Court requires a different period, in which case the Court-sanctioned period shall  
16 apply. Prior to mailing, the Settlement Administrator will perform a skip-trace search to update  
17 and correct for any known or identifiable address changes. If a new address is obtained by way  
18 of a returned Class Notice, the Settlement Administrator shall promptly forward the original  
19 Class Notice to the updated address via first-class regular U.S. mail indicating on the original  
20 Class Notice the date of such re-mailing.

21           c.     Class Notice Dispute Process. Employees will have an opportunity  
22 to dispute the number of Workweeks and/or Pay Periods to which they have been credited  
23 (which are used to calculate the amount of their Class Member Payment and Individual PAGA  
24 Payment). A dispute must: reference "*Jones, et al. v. DAA Draexlmaier of America LLC, et al.*,  
25 Case No. HG20062125"; contain a statement in substance explaining that the Employee disputes  
26 the number of Workweeks and/or Pay Periods credited and what the Employee contends should  
27 be credited to the Employee; contain the full name, address, telephone number, and last four  
28 digits of the Social Security number of the Employee; be signed by the Employee; and must be

1 postmarked on or before the last day of the Opt Out/Objection Period. The date of the postmark  
2 on the return mailing envelope shall be the exclusive means used to determine whether a dispute  
3 has been timely submitted. If the postmark is illegible then the dispute must arrive within seven  
4 (7) days after the last day of the Opt Out/Objection Period to be considered timely. At the time  
5 of submitting a dispute, Employees may enclose documentation showing that the Workweeks  
6 and/or Pay Periods are inaccurate. Absent evidence rebutting Defendants' records, Defendants'  
7 records will be presumed determinative. However, if an Employee produces evidence to the  
8 contrary, the Settlement Administrator will evaluate the evidence submitted by the Employee  
9 and will make the final decision as to the number of eligible Workweeks and/or Pay Periods that  
10 should be applied and/or the amount of the Class Member Payment and Individual PAGA  
11 Payment to which the Employees may be entitled. The Workweek and/or Pay Period dispute  
12 must be submitted by mail to the Settlement Administrator at the specified address and  
13 postmarked on or before the Opt Out/Objection Period. The date of the postmark will be the  
14 exclusive means to determine whether a Workweek and/or Pay Period dispute has been timely  
15 submitted. All such disputes are to be resolved not later than fourteen (14) calendar days after  
16 the Opt Out/Objection Period has concluded.

17 d. Notice Satisfies Due Process. Compliance with the notice  
18 procedures specified in this Settlement Agreement shall constitute due and sufficient notice to  
19 Employees of this Settlement and shall satisfy the requirements of due process. Nothing else  
20 shall be required of, or done by, the Parties, Class Counsel or Defendants' Counsel to provide  
21 notice of the proposed Settlement. In the event the procedures in this Settlement Agreement are  
22 followed and the intended recipient of a Notice of Settlement still does not receive the Notice of  
23 Settlement, the intended recipient shall be a Settlement Class Member and will be bound by all  
24 the terms of the Settlement and the Final Approval entered by the Court if the Settlement  
25 becomes effective.

26 4. Objections or Exclusions.

27 a. Procedure for Objecting to the Class Settlement. The Notice shall  
28 provide that Class Members who wish to object to the Class Settlement must submit to the

1 Settlement Administrator a written statement objecting to the Settlement, by mail, no later than  
2 the last day of the Opt Out/Objection Period. A written objection must: reference *Jones, et al. v.*  
3 *DAA Draexlmaier of America LLC, et al.*, Case No. HG20062125; contain a statement in  
4 substance explaining that the Settlement Class Member objects to the Class Settlement and the  
5 reasons for objecting; contain the full name, address, telephone number, and last four digits of  
6 the Social Security number of the objecting Settlement Class Member; be signed by the  
7 Settlement Class Member; and be postmarked on or before the last day of the Opt Out/Objection  
8 Period. The date of the postmark on the return mailing envelope shall be the exclusive means  
9 used to determine whether an objection has been timely submitted. If the postmark is illegible  
10 then the objection must arrive within seven (7) days after the last day of the Opt Out/Objection  
11 Period to be considered timely. No PAGA Employee may object, opt out, or otherwise be  
12 excluded from the PAGA Settlement, as no such right exists under the law. The Parties will be  
13 permitted to respond in writing to written objections prior to the Final Approval hearing, and to  
14 respond orally to any and all objections at the Final Approval hearing. Settlement Class  
15 Members may appear at the Final Approval hearing and present an objection to the Class  
16 Settlement orally, so long as the Employee provides written notice, which may be by email, to  
17 Class Counsel and the Court at no later than 10:00 a.m. two days prior to the date of the Final  
18 Approval hearing of their intent to appear at the Final Approval hearing. Absent good cause  
19 found by the Court, Settlement Class Members who fail to file and serve timely written  
20 objections in the manner specified above shall be deemed to have waived any objections and  
21 shall be foreclosed from making any objection (whether by appeal or otherwise) to the Class  
22 Settlement.

23 b. Procedure for Requesting Exclusion from the Class Settlement.

24 The Class Notice shall provide that Class Members who wish to exclude themselves from the  
25 Class Settlement must submit a signed, written statement requesting exclusion from the Class  
26 Settlement, to the Settlement Administrator by mail, on or before the last day of the Opt  
27 Out/Objection Period. The opt-out request must state in substance, words to the effect: “ I wish  
28 to opt out of the Class Settlement in *Jones, et al. v. DAA Draexlmaier of America LLC, et al.*,

1 Case No. HG20062125. I understand that by requesting to be excluded from the Settlement  
2 Class, I will not receive a Class Member Payment. I also understand that I will still receive a  
3 PAGA Payment for my share of the PAGA Settlement because I cannot object or exclude  
4 myself from the PAGA Settlement.” Such written request for exclusion must contain the full  
5 name, address, telephone number, and last four digits of the Social Security number of the Class  
6 Member requesting exclusion; be signed by the Class Member; and be postmarked on or before  
7 the last day of the Opt Out/Objection Period. The date of the postmark on the return mailing  
8 envelope shall be the exclusive means used to determine whether a request for exclusion has  
9 been timely submitted. If the postmark is illegible then the request for exclusion must arrive  
10 within seven (7) calendar days after the last day of the Opt Out/Objection Period to be  
11 considered timely. Any Class Member who opts out of the Class Settlement will not be entitled  
12 to any recovery under the Settlement from the Class Payout Fund and will not be bound by the  
13 Class Settlement or have any right to object, appeal or comment in court on the Class  
14 Settlement. Class Members who fail to submit a valid and timely request for exclusion on or  
15 before the last day of the Opt Out/Objection Period shall be Settlement Class Members and shall  
16 be bound by the Class Settlement. No PAGA Employee may object, opt out, or otherwise be  
17 excluded from the PAGA Settlement, as no such right exists under the law.

18 c. No Solicitation of Objections or Exclusions. The Parties agree to  
19 use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties  
20 or their counsel seek to directly or indirectly solicit or otherwise encourage Class Members to  
21 submit objections to the Class Settlement or requests for exclusion from the Class Settlement, or  
22 appeal from the Court’s Final Approval Order and Judgment.

23 5. Certification Reports by the Settlement Administrator.

24 a. The Settlement Administrator will, on a weekly basis following  
25 distribution of the Class Notice and up to Final Approval, provide updates to Class Counsel and  
26 Defendants’ Counsel as to the number of Class Members who submitted timely and complete  
27 requests for exclusions, disputes of Pay Periods and/or Workweeks, and objections. All written  
28 objections shall be provided to the Parties’ counsel within five (5) calendar days of receipt by



1 the Settlement Administrator. The weekly updates shall also provide updated data on the extent  
2 of Class Notices that are returned undeliverable and any re-mailing efforts.

3           b.       Within five (5) business days after the last day of the Opt  
4 Out/Objection Period, the Settlement Administrator will prepare a declaration to be provided to  
5 Class Counsel and Defendants' Counsel for filing in support of Named Plaintiffs' motion for  
6 final approval attesting to the following: (i) its mailing efforts regarding the Class Notice; (ii) its  
7 receipt of any timely and complete requests for exclusion, disputes of Pay Periods and/or  
8 Workweeks, and objections; (ii) its inability to deliver the Class Notice to Class Members, if  
9 any; (iii) the number of Settlement Class Members; (iv) the highest and lowest estimated Class  
10 Member Payment and Individual PAGA Payment, along with the estimated average Class  
11 Member Payment and average Individual PAGA Payment. The Settlement Administrator will  
12 also prepare and submit to Class Counsel and Defendants' Counsel for filing in support of the  
13 motion for final approval any supplemental declaration as applicable.

14           6.       Right of Defendants to Reject Settlement.

15           a.       Option to Void Settlement. If the number of Class Members who  
16 have timely submitted requests for exclusion from the Class Settlement totals more than ten  
17 percent (10%) of the Class, Defendants shall have, in their sole discretion, the option to void this  
18 Settlement. In order to exercise this option, Defendants must notify Class Counsel in writing  
19 within fifteen (15) calendar days after the later of (1) the last day of the Opt Out/Objection  
20 Period or (2) the date Defendants learn in writing from the Settlement Administrator that the  
21 number of Class Members who have timely submitted requests for exclusion total in number  
22 more than ten percent (10%) of the Class. Defendants shall be solely responsible for the  
23 administration costs if they choose to void the Settlement.

24           b.       Defendants represent that during the Settlement Period, Employees  
25 worked a total of approximately Thirty Thousand Five Hundred Eighty-Four (30,584)  
26 Workweeks. The number of Workweeks is material fact which Plaintiffs relied upon in reaching  
27 this Agreement. Within fifteen (15) days of receipt of the Employee List, the Administrator shall  
28 calculate and provide to all Parties the number of Workweeks during the Settlement Period. If

1 the Workweeks calculated by the Administrator exceed five percent (5%) of Thirty Thousand  
2 Five Hundred Eighty-Four (30,584) Workweeks, or Thirty-Two Thousand One Hundred  
3 Fourteen (32,114) Workweeks, the Gross Settlement Amount shall increase automatically in  
4 proportion to the amount of Workweeks in excess of the Thirty-Two Thousand One Hundred  
5 Fourteen (32,114) Workweeks.

6 c. Nullification of Settlement Agreement. In the event: (i) the Court  
7 does not enter the Order specified herein; (ii) the Court does not finally approve the Settlement  
8 as provided herein; (iii) the Court does not enter a final judgment as provided herein which  
9 becomes final as a result of the occurrence of the Effective Date; or (iv) the Settlement does not  
10 become final for any other reason, this Settlement Agreement shall be null and void and any  
11 order or judgment entered by the Court in furtherance of this Settlement shall be treated as void  
12 ab initio. In such a case, the Parties and any funds to be awarded under this Settlement shall be  
13 returned to their respective statuses as of the date and time immediately prior to the execution of  
14 this Agreement, the Class List in the possession of the Settlement Administrator shall be  
15 returned to Defendants, and the Parties shall proceed in all respects as if this Settlement  
16 Agreement had not been executed, except that any fees already incurred by the Settlement  
17 Administrator shall be borne equally by the Parties. In the event an appeal is filed from the  
18 Court's Final Approval Order and Judgment, or any other appellate review is sought prior to the  
19 Effective Date, administration of the Settlement shall be stayed pending final resolution of the  
20 appeal or other appellate review.

21 7. Final Approval Hearing and Entry of Final Judgment.

22 a. Upon expiration of the Opt Out/Objection Period, with the Court's  
23 permission, a Final Approval hearing shall be conducted to determine Final Approval of the  
24 Settlement along with the amount properly payable for (i) the Class Counsel Fees Award and  
25 Class Counsel Costs Award, (ii) Named Plaintiffs Enhancement Payments, (iii) Settlement  
26 Administrator's Costs, (iv) Class Member Payments; and (v) the Individual PAGA Payments.  
27 Upon Final Approval of the Settlement by the Court at or after the Final Approval hearing, the  
28 Parties shall present a proposed order granting Final Approval and judgment (in a form to be

1 agreed upon by the Parties) (“Final Approval Order and Judgment”) to the Court for its  
2 approval. Class Counsel will be responsible for drafting all documents necessary to obtain Final  
3 Approval, including the Final Approval Order and Judgment.

4           b.     The Settlement Administrator shall keep counsel for the Parties  
5 apprised of all distributions from the Qualified Settlement Account and upon completion of  
6 administration of that portion of the Settlement, the Settlement Administrator shall provide  
7 written certification, under penalty of perjury, of such completion to the Court and counsel for  
8 all Parties.

9           c.     Upon completion of administration of the Settlement, the  
10 Settlement Administrator shall provide written certification, under penalty of perjury, of such  
11 completion to the Court and counsel for all Parties.

12           8.     Administration Costs. All of Defendants’ own legal fees, costs and  
13 expenses incurred in the Lawsuits shall be borne by Defendants. As set forth above, settlement  
14 administration expenses will be paid from the Settlement Administration Costs. The Parties  
15 agree to cooperate in the Settlement administration process and to make all reasonable efforts to  
16 control and minimize the costs and expenses incurred in administration of the Settlement.

17 **IV. Other Provisions**

18           **A. Dispute Resolution.** Except as otherwise set forth herein, all disputes regarding  
19 compliance with this Agreement shall be resolved as follows:

20           1.     If Named Plaintiffs or Class Counsel, on behalf of Named Plaintiffs or any  
21 Employee, or Defendants at any time believe that the other Party has breached or acted contrary  
22 to the Agreement, that Party shall notify the other Party in writing of the alleged violation.

23           2.     Upon receiving notice of the alleged violation or dispute, the responding  
24 Party shall have ten (10) calendar days to correct the alleged violation and/or respond to the  
25 initiating Party with the reasons why the party disputes all or part of the allegation.

26           3.     If the response does not address the alleged violation to the initiating  
27 Party’s satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to  
28 resolve their differences.

1                   4.     If Class Counsel and Defendants are unable to resolve their differences  
2 after twenty (20) calendar days, either Party may file an appropriate motion for enforcement  
3 with the Court. The briefing of such motion should be in letter brief form and shall not exceed  
4 five (5) single-spaced pages (excluding exhibits).

5                   **B. Attorneys' Fees.** Reasonable attorneys' fees and costs for work done in  
6 resolving a dispute under this Section may be recovered by any Party that prevails under the  
7 standards set forth within the meaning of applicable law.

8                   **C. Publicity.** The Parties agree that neither Named Plaintiffs nor Class Counsel  
9 shall issue any press release or announcement of any kind related in any way to the Settlement.  
10 Named Plaintiffs and Class Counsel agree that, prior to preliminary approval of the Settlement,  
11 they will keep the terms of the Settlement confidential except for purposes of communicating  
12 with Named Plaintiffs only and except for undertaking the necessary submissions to the LWDA  
13 that are required by the PAGA statute. Named Plaintiffs shall be informed that the Settlement is  
14 confidential and shall be advised to keep the Settlement confidential. From and after  
15 preliminary approval of the Settlement, Named Plaintiffs and Class Counsel may comment  
16 regarding the specific terms of the Settlement only: (1) as required by law; (2) as required under  
17 the terms of the Settlement; or (3) as required under counsel's duties and responsibilities as  
18 Class Counsel. In all other cases, Named Plaintiffs and Class Counsel agree to limit their  
19 statements regarding the terms of the Settlement, whether oral, written or electronic (including  
20 without limitation on social media), to say the Lawsuits, the Fairley Action, the Gray Action,  
21 and the Jones Action have been resolved and that Named Plaintiffs and Class Counsel are  
22 satisfied with the terms of the Settlement. Class Counsel shall not, at any time, advertise or  
23 mention the terms of the Settlement or state that they obtained a favorable settlement referencing  
24 Defendants' names on personal or firm website(s); shall not discuss the terms of the Settlement  
25 with media, the general public, or issue press releases; and shall limit any statements regarding  
26 the terms of the Settlement to that information that is publicly available. Nothing in this  
27 Paragraph is intended to interfere with Class Counsel's duties and obligations to faithfully  
28 discharge their duties as Class Counsel, including but not limited to, communicating with

1 Employees regarding the Settlement and undertaking submission to the WLDA that are required  
2 by the PAGA statute.

3 **D. Privacy of Documents and Information.** Named Plaintiffs and Class Counsel  
4 agree that none of the documents and information provided to them by Defendants shall be used  
5 for any purpose other than settlement of the Lawsuits. Named Plaintiffs and their Class Counsel  
6 agree to comply with the terms of the Stipulated Protective Order entered in the Fairley Action,  
7 the Gray Action, and the Jones Action.

8 **E. No Admission By the Released Parties.**

9 1. The Released Parties, including Defendants, deny any and all claims  
10 alleged in the Lawsuits and deny any and all wrongdoing whatsoever. This Settlement  
11 Agreement is not a concession or admission, and shall not be used against Defendants or any of  
12 the Released Parties as an admission or indication with respect to any claim of any fault,  
13 concession or omission by Defendants or any of the Released Parties. Whether or not the  
14 Settlement is finally approved, neither the Settlement, nor any document, statement, proceeding  
15 or conduct related to this Settlement Agreement, nor any reports or accounts thereof, shall in any  
16 event be offered by either Party in evidence for any purpose adverse to the Released Parties,  
17 including, but not limited to, evidence of a presumption, concession, indication or admission by  
18 any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage;  
19 or disclosed, referred to, or offered in evidence against any of the Released Parties, in any  
20 further proceeding in the Lawsuits, or any other civil, criminal or administrative action or  
21 proceeding, except for purposes of settling the Lawsuits pursuant to this Settlement Agreement.

22 2. The Released Parties, including Defendants, shall have the right to use this  
23 Settlement, including the releases set forth above, to defend against any claims asserted by or on  
24 behalf of Employees or the LWDA, that are encompassed within the releases, whether such  
25 claims are asserted in the Lawsuits or any other lawsuit.

26 **F. Exhibits and Headings.** The terms of this Settlement Agreement include the  
27 terms set forth in any attached Exhibits 1-2 which are incorporated by this reference as though  
28 fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of the

1 Settlement. The descriptive headings of any paragraphs or sections of this Settlement  
2 Agreement are inserted for convenience of reference only and do not constitute a part of this  
3 Settlement Agreement.

4 **G. Interim Stay of Proceedings.** The Parties agree to hold all proceedings in the  
5 Lawsuits, except such proceedings necessary to implement and complete the Settlement, in  
6 abeyance pending the Final Approval hearing to be conducted by the Court.

7 **H. Amendment or Modification.** This Settlement Agreement may be amended or  
8 modified only by a written instrument signed by all Parties or their successors-in-interest.

9 **I. Entire Agreement.** This Settlement Agreement and any attached Exhibits  
10 constitute the entire agreement among these Parties with respect to resolution of the Lawsuits.  
11 To the extent there are any other oral or written agreements relating to the subject matter of this  
12 Settlement Agreement, this Settlement Agreement controls and supersedes all such agreements.  
13 No oral or written representations, warranties or inducements have been made to any Party  
14 concerning this Settlement Agreement or its Exhibits other than the representations, warranties  
15 and covenants contained and memorialized in this Settlement Agreement and any attached  
16 Exhibits.

17 **J. Authorization to Enter Into Settlement Agreement.** Counsel for all Parties  
18 warrant and represent they are expressly authorized by the Parties whom they represent and who  
19 are signing this Settlement Agreement, to negotiate this Settlement Agreement and to take all  
20 appropriate action required or permitted to be taken by such Parties pursuant to this Settlement  
21 Agreement to effectuate its terms, and to execute any other documents required to effectuate the  
22 terms of this Settlement Agreement. The Parties and their counsel will cooperate with each  
23 other and use their best efforts to effect the implementation of the Settlement.

24 **K. Binding on Successors and Assigns.** This Settlement Agreement shall be  
25 binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as  
26 previously defined.

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1           **L. California Law Governs.** All terms of this Settlement Agreement and the  
2 Exhibits hereto shall be governed by and interpreted according to the laws of the State of  
3 California.

4           **M. Counterparts.** This Settlement Agreement may be executed in one or more  
5 counterparts. All executed counterparts, including electronic (e.g., DocuSign), facsimile, and  
6 scanned copies of the signature page, will be deemed to be one and the same instrument.

7           **N. This Settlement is Fair, Adequate and Reasonable.** The Parties believe this  
8 Settlement is a fair, adequate and reasonable settlement of the Lawsuit and have arrived at this  
9 Settlement in arms-length negotiations, taking into account all relevant factors, present and  
10 potential. This Settlement was reached after extensive negotiations and mediation with a well-  
11 renowned class action mediator.

12           **O. Jurisdiction.** The Court shall retain jurisdiction with respect to the interpretation,  
13 implementation and enforcement of the terms of this Settlement Agreement and all orders and  
14 judgments entered in connection therewith, and the parties and their counsel hereto submit to the  
15 jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement  
16 embodied in this Settlement Agreement and all orders and judgments entered in connection  
17 therewith.

18           **P. Cooperation and Drafting.** The Parties agree that the terms and conditions of  
19 this Settlement Agreement are the result of lengthy, intensive arm's-length negotiations between  
20 the Parties, . Each of the parties has cooperated in the drafting and preparation of this Settlement  
21 Agreement. Hence, in any construction made to this Settlement Agreement, the same shall not  
22 be construed against any of the Parties. This Settlement shall not be construed in favor of or  
23 against any Party by reason of the extent to which any Party or his, her, or its counsel  
24 participated in the drafting of this Settlement Agreement

25           **Q. Invalidity of Any Provision.** Before declaring any provision of this Settlement  
26 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest  
27 extent possible consistent with applicable precedents so as to define all provisions of this  
28 Settlement Agreement valid and enforceable.

1           **R.     Named Plaintiffs Shall Not Opt Out of the Settlement.** Named Plaintiffs agree  
2 to sign this Settlement Agreement, and by signing this Settlement Agreement are bound by the  
3 terms herein, including without limitation the general release set forth above subject to the  
4 occurrence of the Effective Date and Defendants' full payment of all sums due hereunder.  
5 Named Plaintiffs shall retain their rights to participate as Employees under this Settlement  
6 Agreement, and agree that they may not opt out of the Settlement Class.

7           **S.     Parties Represented by Counsel.** The Parties hereby acknowledge that they have  
8 been represented in negotiations for and in the preparation of this Agreement by independent  
9 counsel of their own choosing, they have read this Agreement and have had it fully explained to  
10 them by such counsel, and they are fully aware of the contents of this Agreement and of its legal  
11 effect.

12           **T.     Voluntary Agreement.** This Settlement Agreement is executed voluntarily and  
13 without duress or undue influence on the part of or on behalf of either Party, or of any other  
14 person, firm, or entity. Each Party has made such investigation of the facts pertaining to this  
15 Settlement Agreement and of all other matters pertaining hereto as he, she, or it deems  
16 necessary.

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**LIST OF EXHIBITS**

- 1. First Amended and Consolidated Class Action and PAGA Complaint
- 2. Class Notice

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Dated: June 2, 2022

LAWYERS *for* JUSTICE, PC

By: 

EDWIN AIWAZIAN  
JOANNA GHOSH

Attorneys for Plaintiff  
EDDIE FAIRLEY

Dated: June \_\_\_\_, 2022

MATERN LAW GROUP, PC

By: \_\_\_\_\_

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LAUNA ADOLPH

Attorneys for Plaintiff  
DEMETREIA GRAY

Dated: June \_\_\_\_, 2022

GAINES & GAINES, APLC

By: \_\_\_\_\_

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Attorneys for Plaintiff  
COREY JONES

Dated: June \_\_\_\_, 2022

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By: \_\_\_\_\_

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LUIS F. ARIAS

Attorneys for Defendants  
DAA DRAEXLMAIER AUTOMOTIVE OF  
AMERICA LLC and DAN DRAEXLMAIER  
AUTOMOTIVE NORTH AMERICA LLC

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Dated: June \_\_, 2022

LAWYERS *for* JUSTICE, PC

By: \_\_\_\_\_

EDWIN AIWAZIAN  
JOANNA GHOSH

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EDDIE FAIRLEY

Dated: June 7, 2022

MATERN LAW GROUP, PC

By: \_\_\_\_\_



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Dated: June \_\_, 2022

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Dated: June \_\_, 2022

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DAA DRAEXLMAIER AUTOMOTIVE OF  
AMERICA LLC and DAN DRAEXLMAIER  
AUTOMOTIVE NORTH AMERICA LLC

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Dated: June \_\_, 2022

LAWYERS *for* JUSTICE, PC

By: \_\_\_\_\_

EDWIN AIWAZIAN  
JOANNA GHOSH

Attorneys for Plaintiff  
EDDIE FAIRLEY

Dated: June \_\_, 2022

MATERN LAW GROUP, PC

By: \_\_\_\_\_

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Attorneys for Plaintiff  
DEMETREIA GRAY

Dated: June 7, 2022

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By: \_\_\_\_\_

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Dated: June 7, 2022

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06 / 07 / 2022

Dated: June \_\_, 2022

By: *Corey Jones*  
COREY JONES

Dated: June \_\_, 2022

By: \_\_\_\_\_  
DEMETREIA GRAY

Dated: June \_\_, 2022

By: \_\_\_\_\_  
EDDIE FAIRLEY

Dated: 6/7/2022

DAA DRAEXLMAIER AUTOMOTIVE OF  
AMERICA LLC and DAN DRAEXLMAIER  
AUTOMOTIVE NORTH AMERICA LLC


DocuSigned by:  
*Vincenc Pearson*  
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By: Vincenc Pearson  
Its: corporate counsel

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Dated: June \_\_\_, 2022

By: \_\_\_\_\_  
COREY JONES

Jun 10, 2022  
Dated: June \_\_\_, 2022

By:  \_\_\_\_\_  
Antonette Gray (Jun 10, 2022 14:22 PDT)  
DEMETREIA GRAY

Dated: June \_\_\_, 2022

By: \_\_\_\_\_  
EDDIE FAIRLEY

Dated: June \_\_\_, 2022

DAA DRAEXLMAIER AUTOMOTIVE OF  
AMERICA LLC and DAN DRAEXLMAIER  
AUTOMOTIVE NORTH AMERICA LLC

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Dated: June \_\_\_, 2022

By: \_\_\_\_\_  
COREY JONES

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By: \_\_\_\_\_  
DEMETREIA GRAY

06/02/2022

Dated: June \_\_\_, 2022

By: 

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EDDIE FAIRLEY

Dated: June \_\_\_, 2022

DAA DRAEXLMAIER AUTOMOTIVE OF  
AMERICA LLC and DAN DRAEXLMAIER  
AUTOMOTIVE NORTH AMERICA LLC

By: \_\_\_\_\_  
Its:

# **EXHIBIT A**



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8 Attorneys for Plaintiff Corey Jones, individually and on behalf of all similarly situated individuals,  
9 on behalf of the general public, and all “aggrieved employees” pursuant to Labor Code § 2698 *et*  
*seq.*

10 [ADDITIONAL COUNSEL IN FOLLOWING PAGE]

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF ALAMEDA**

13 COREY JONES, EDDIE FAIRLEY,  
14 DEMETREIA GRAY, individually, and on  
behalf of other members of the general public  
15 similarly situated and all “aggrieved  
employees” pursuant to Labor Code § 2698 *et*  
16 *seq.*

17 Plaintiffs,

18 v.

19 DAA DRAEXLMAIER AUTOMOTIVE OF  
AMERICA LLC, a South Carolina limited  
20 liability corporation; DAN DRAEXLMAIER  
AUTOMOTIVE OF NORTH AMERICA  
21 LLC, a South Carolina limited liability  
corporation; and DOES 1 through 10,  
22 inclusive,

23 Defendants.

Case No.: HG20062125

*Assigned to the Honorable Paul D. Herbert,  
Dept. 20*

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION  
COMPLAINT FOR:**

1. **FAILURE TO PAY ALL WAGES  
(LABOR CODE §§ 246, 510, 1197, 1197.1,  
1194, 1194.2, AND 1198)**
2. **FAILURE TO PROVIDE REST  
PERIODS OR COMPENSATION IN LIEU  
THEREOF (LABOR CODE § 226.7; IWC  
WAGE ORDER 1-2001)**
3. **FAILURE TO PROVIDE MEAL  
PERIODS OR COMPENSATION IN LIEU  
THEREOF (LABOR CODE §§ 226.7, 510,  
512, 1174(d), AND 1194; IWC WAGE  
ORDER 1-2001)**
4. **KNOWING AND INTENTIONAL  
FAILURE TO COMPLY WITH  
ITEMIZED EMPLOYEE WAGE  
STATEMENT PROVISIONS (LABOR  
CODE § 226(a), (e))**
5. **KNOWING AND INTENTIONAL  
FAILURE TO KEEP REQUISITE**

**PAYROLL RECORDS (LABOR CODE § 1174(d))**

**6. FAILURE TO REIMBURSE EXPENSES (LABOR CODE §§ 2800 AND 2802)**

**7. FAILURE TO PAY WAGES DUE AT SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)**

**8. FAILURE TO PAY WAGES DURING EMPLOYMENT (LABOR CODE § 204)**

**9. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**

**10. PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 204, 226(a), 226.7, 510, 512, 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, AND 2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 210, 218.5, 226.3, AND 558**

**DEMAND FOR JURY TRIAL**

*Complaint Filed: May 11, 2020*

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Attorneys for Plaintiff Demetreia Gray

1 Plaintiffs COREY JONES, EDDIE FAIRLEY, and DEMETREIA GRAY (collectively,  
2 “Plaintiffs”), individually and on behalf of all similarly situated individuals (the “Class” or “Plaintiff  
3 Class”), on behalf of the general public, and as “aggrieved employees” under the Labor Code Private  
4 Attorneys General Act of 2004, complain of Defendants, and each of them, as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure § 382  
8 and Labor Code § 2698 *et seq.*, on behalf of Plaintiffs and all other non-exempt employees who work  
9 or formerly worked for DAA DRAEXLMAIER AUTOMOTIVE OF AMERICA LLC, a South  
10 Carolina limited liability corporation, DAN DRAEXLMAIER AUTOMOTIVE OF NORTH  
11 AMERICA LLC, a South Carolina limited liability corporation, and any subsidiaries or affiliated  
12 companies (hereinafter collectively referred to as “Defendants”) within the State of California.

13 2. For at least four (4) years prior to the filing of this action and continuing to the present  
14 (the “liability period”) Defendants have had a consistent policy of failing to pay all minimum,  
15 overtime, sick pay, and meal period and rest period premium wages due to Class Members (as defined  
16 below); provide legally compliant meal and rest periods or compensation in lieu thereof to Class  
17 Members; provide accurately itemized wage statements to Class Members; provide requisite payroll  
18 records to Class Members; failing to pay all expense reimbursement due to Class Members; and to  
19 timely pay wages during employment and upon separation of employment to Class Members.

20 3. Plaintiffs, on behalf of themselves and members of the Class, brings this action  
21 pursuant to Labor Code §§ 201, 202, 203, 204, 210, 218.5, 226(a), 226.3, 226.7, 510, 512, 551, 552,  
22 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802 seeking compensation for all unpaid  
23 wages, liquidated damages, unreimbursed expenses, statutory penalties, injunctive and other equitable  
24 relief, and reasonable attorneys’ fees and costs.

25 4. Plaintiffs, on behalf of themselves and members of the Class and pursuant to Business  
26 & Professions Code §§ 17200-17208, also seek injunctive relief, restitution, and disgorgement of all  
27 benefits Defendants enjoyed from their failure to pay all wages and expense reimbursement to Class  
28 Members.

1 5. Plaintiffs, on behalf of themselves and all aggrieved employees pursuant to Labor  
2 Code §§ 2698 *et seq.*, seek civil penalties for Defendants' various violations of the California Labor  
3 Code.

4 6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395  
5 because Defendants employed Plaintiffs and Class Members in Alameda County, California.

6 **II.**

7 **PARTIES**

8 **A. Plaintiffs**

9 7. Plaintiff COREY JONES was employed by Defendants from March 2019 through  
10 December 2019 in Alameda County, California.

11 8. Plaintiff EDDIE FAIRLEY was employed by Defendants from November 2017  
12 through July 2017 in Alameda County, California.

13 9. Plaintiff DEMETREIA GRAY was employed by Defendants from January 2018  
14 through October 2019 in Alameda County, California.

15 During their work with Defendants, Plaintiffs were:

- 16 a. Willfully denied the payment of all minimum, overtime, sick pay, and rest  
17 period and meal period premium wages;
- 18 b. Willfully denied rest periods or compensation in lieu thereof;
- 19 c. Willfully denied meal periods or compensation in lieu thereof;
- 20 d. Willfully denied accurately itemized wage statements;
- 21 e. Willfully denied requisite payroll records;
- 22 f. Willfully denied the payment of all expense reimbursement due; and
- 23 g. Denied the timely payment of wages during employment and upon separation  
24 of their employment.

25 **B. Defendants**

26 10. Defendant DAA DRAEXLMAIER AUTOMOTIVE OF AMERICA LLC is a South  
27 Carolina limited liability company. Defendant DAA DRAEXLMAIER AUTOMOTIVE OF  
28

1 AMERICA LLC employed Plaintiffs and Class Members throughout the State of California,  
2 including in Alameda County, California.

3 11. Defendant DAN DRAEXLMAIER AUTOMOTIVE OF NORTH AMERICA LLC is  
4 a South Carolina limited liability company. Defendant DAN DRAEXLMAIER AUTOMOTIVE OF  
5 NORTH AMERICA LLC employed Plaintiffs and Class Members throughout the State of California,  
6 including in Alameda County, California.

7 12. The true names and capacities, whether individual, corporate, associate, or otherwise,  
8 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiffs, who  
9 therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs  
10 are informed and believe, and based thereon allege, that each of the Defendants designated herein as  
11 a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will  
12 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants  
13 designated hereinafter as DOES when such identities become known.

14 13. Plaintiffs are informed and believe, and based thereon allege, that each Defendant  
15 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
16 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are  
17 legally attributable to the other Defendants.

18 14. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting  
19 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more  
20 provisions of the California Labor Code as alleged herein.

21 **III.**

22 **CLASS ACTION ALLEGATIONS**

23 15. Plaintiffs brings this action on behalf of themselves, and all others similarly situated  
24 as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiffs seek to represent the  
25 following class composed of and defined as follows:

26 \\\

27 \\\

28 \\\

1 **THE CLASS**

2 All persons employed by Defendants in California as non-exempt  
3 employees at any time since the date four years preceding the filing of  
4 this Action to final judgment.

5 16. Plaintiffs reserve the right under Rule 3.765, California Rules of Court, to amend or  
6 modify this class description with greater specificity or further division into subclasses or limitation  
7 to particular issues.

8 17. This action has been brought and may properly be maintained as a class action under  
9 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of  
10 interest in the litigation and the proposed Class is easily ascertainable.

11 **A. Numerosity**

12 18. The potential members of the Class as defined are so numerous that joinder of all the  
13 members the Class is impracticable. While the precise number of members of the Class has not been  
14 ascertained at this time, Plaintiffs are informed and believe, and based thereon allege, that Defendants  
15 currently employ, and during the relevant time periods employed, over 50 persons in the State of  
16 California who fall within the Class definition.

17 19. Accounting for employee turnover during the relevant period necessarily increases this  
18 number. Plaintiffs allege Defendants' employment records would provide information as to the  
19 number and location of members of the Class. Joinder of members of the Class is not practicable.

20 **B. Commonality**

21 20. There are questions of law and fact common to the Class that predominate over any  
22 questions affecting only individual Class Members. These common questions of law and fact include,  
23 without limitation:

- 24 a. Whether Defendants failed to pay Plaintiffs and Class Members all wages due,  
25 in violation of Labor Code §§ 246, 510, 512, 1194, 1194.2, 1197, 1197.1, and  
26 1198;

- 1 b. Whether Defendants failed to properly provide rest periods or compensation in  
2 lieu thereof to Plaintiffs and Class Members, in violation of Labor Code §  
3 226.7 and IWC Wage Order 1-2001;
- 4 c. Whether Defendants failed to properly provide meal periods or compensation  
5 in lieu thereof to Plaintiffs and Class Members, in violation of Labor Code §§  
6 226.7, 512, 1174(d), and IWC Wage Order 1-2001;
- 7 d. Whether Defendants required Plaintiffs and the other Class Members to work  
8 over eight (8) hours per day, over forty (40) hours per week, and/or six (6)  
9 consecutive days per workweek and failed to pay the legally required overtime  
10 compensation to Plaintiffs and the other Class Members;
- 11 e. Whether Defendants failed to use the shift differentials/bonus wages/non-  
12 discretionary bonuses/non-discretionary performance pay/other non-base  
13 hourly wages to calculate the regular rate of pay used to calculate the overtime  
14 rate for the payment of overtime wages where Plaintiffs and the other Class  
15 Members earned shift differentials/bonus wages/non-discretionary  
16 bonuses/non-discretionary performance pay/other non-base hourly wages and  
17 overtime wages in the same workweek.
- 18 f. Whether Defendants failed to provide Plaintiffs and Class Members with  
19 accurately itemized wage statements, in accordance with Labor Code § 226(a)  
20 and (e);
- 21 g. Whether Defendants kept complete and accurate payroll records as required by  
22 California Labor Code, including, *inter alia*, section 1174(d);
- 23 h. Whether Defendants failed to pay reporting time pay to Plaintiffs and the other  
24 Class Members;
- 25 i. Whether Defendants failed to reimburse Plaintiffs and Class Members for  
26 necessary business expenses incurred in direct consequence of the discharge  
27 of their duties, in violation of Labor Code §§ 2800 and 2802;
- 28

1 j. Whether Defendants failed to timely pay Plaintiffs and Class Members all  
2 wages due and owing at the separation of their employment, in violation of  
3 Labor Code §§ 201-203;

4 k. Whether Defendants failed to timely pay all wages due to Plaintiff and the  
5 other Class Members during their employment, in violation of Labor Code §  
6 204; and

7 l. Whether Plaintiffs and Class Members are entitled to equitable relief pursuant  
8 to Business & Professions Code § 17200 *et seq.*

9 **C. Typicality**

10 21. The claims of the named Plaintiffs are typical of the claims of members of the Class.  
11 Plaintiffs and members of the Class sustained injuries and damages arising out of and caused by  
12 Defendants' common course of conduct in violation of laws, regulations that have the force and effect  
13 of law, and statutes as alleged herein.

14 **D. Adequacy of Representation**

15 22. Plaintiffs will fairly and adequately represent and protect the interests of members of  
16 the Class. Counsel who represent Plaintiffs are competent and experienced in litigating large  
17 employment class actions.

18 **E. Superiority of Class Action**

19 23. A class action is superior to other available means for the fair and efficient adjudication  
20 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and  
21 questions of law and fact common to the proposed Class predominate over any questions affecting  
22 only individual members of the proposed Class. Each member of the proposed Class has been  
23 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

24 24. Class action treatment will allow those similarly situated persons to litigate their  
25 claims in the manner that is most efficient and economical for the parties and the judicial system.  
26 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this  
27 action that would preclude its maintenance as a class action.

28 \\\



1 IV.

2 CAUSES OF ACTION

3 FIRST CAUSE OF ACTION

4 PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

5 FAILURE TO PAY ALL WAGES

6 (LABOR CODE §§ 246, 510, 512, 1194, 1194.2, 1197, 1197.1, AND 1198 AND IWC WAGE

7 ORDER 1-2001)

8 25. Plaintiffs incorporate paragraphs 1 through 24 of this Complaint as though fully set  
9 forth herein.

10 26. Labor Code § 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage  
11 Order provide that it is unlawful to employ persons without compensating them at a rate of pay either  
12 time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours  
13 worked by the person on a daily or weekly basis.

14 27. Specifically, the applicable IWC Wage Order provides that Defendants are and were  
15 required to pay Plaintiffs and the other Class Members, and working more than eight (8) hours in a  
16 day, more than forty (40) hours in a workweek, and/or more than six (6) consecutive days in a  
17 workweek at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day  
18 or more than forty (40) hours in a workweek.

19 28. The applicable IWC Wage Order further provides that Defendants are and were  
20 required to pay Plaintiffs and the other Class Members overtime compensation at a rate of two times  
21 their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

22 29. Labor Code § 510 provides that, “any work in excess of eight hours in one workday  
23 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the  
24 seventh day of work in any one workweek shall be compensated at the rate of no less than one and  
25 one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day  
26 shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In  
27 addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated  
28 at the rate of no less than twice the regular rate of pay of an employee.” Labor Code § 1194 provides

1 that “any employee receiving less than the legal minimum wage or the legal overtime compensation  
2 applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount  
3 of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s  
4 fees, and costs of suit.”

5 30. During the liability period, Plaintiffs and the other Class Members worked in excess  
6 of eight (8) hours in a day, in excess of forty (40) hours in a week, and/or in excess of six (6)  
7 consecutive days in a workweek.

8 31. During the liability period, Defendants failed to properly compute shift differentials,  
9 bonus wages, non-discretionary bonuses, non-discretionary performance pay and other non-base  
10 hourly wages earned by Plaintiffs and Class Members into their regular rate of pay for purposes of  
11 paying them overtime at the correct rates, in violation of Labor Code §§ 510, 1194, and 1198.  
12 Defendants failed to properly blend shift differentials, bonus wages, non-discretionary bonuses, non-  
13 discretionary performance pay and other non-base hourly wages and instead paid Plaintiffs and Class  
14 Members overtime based *only* on the base hourly rate of pay, thus depriving Plaintiffs and Class  
15 Members of all overtime and double time wages earned, in violation of Labor Code §§ 510, 1194,  
16 and 1198. Defendants also failed to blend shift differentials, bonus wages, non-discretionary bonuses,  
17 non-discretionary performance pay and other non-base hourly wages earned by Plaintiffs and Class  
18 Members into their sick pay rate, yielding an underpayment, in violation of Labor Code §§ 246, 510,  
19 1194, and 1198. Defendants also failed to blend shift differentials, bonus wages, non-discretionary  
20 bonuses, non-discretionary performance pay and other non-base hourly wages earned by Plaintiffs  
21 and Class Members into their meal period premium pay rate, yielding an underpayment of wages, in  
22 violation of Labor Code §§ 510, 512, 1194, and 1198.

23 32. Furthermore, Defendants also fail to pay all minimum wages due and owing to  
24 Plaintiffs and Class Members, in violation of Labor Code §§ 1194, 1197, 1197.1, and 1198 and IWC  
25 Wage Order No. 1-2001 § 4.

26 33. Pursuant to California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 1-  
27 2001 § 4, payment to an employee of less than the applicable minimum wage for all hours worked in  
28 a payroll period is unlawful.

1 34. During the liability, Defendants knew or should have known that Plaintiffs and the  
2 other Class Members performed work off the clock for which they were not compensated.

3 35. During the liability period, Defendants knew or should have known that Plaintiffs and  
4 the other Class Members were entitled to pay equal to half the usual or scheduled day's work in an  
5 amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay  
6 for each workday in which Plaintiffs and the other Class Members were required to report to work  
7 and were furnished less than half the usual or scheduled day's work.

8 36. During the liability period, Defendants knew or should have known that Plaintiffs and  
9 the other Class Members were entitled to pay equal to no less than two (2) hours at Plaintiffs' and the  
10 other Class Members regular rate of pay for each day in which Plaintiffs and the other Class Members  
11 were required to report for work a second time in one workday and were furnished less than two hours  
12 of work on the second reporting.

13 37. As a result of the unlawful acts of Defendants in willfully failing to pay all wages,  
14 Plaintiffs and Class Members have been deprived of wages in amounts to be determined at trial, and  
15 are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and  
16 costs pursuant to Labor Code §§ 1194, 1197, 1197.1, and 1198 and IWC Wage Order No. 1-2001,  
17 and liquidated damages in accordance with Labor Code § 1194.2.

18 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

19 **V.**

20 **SECOND CAUSE OF ACTION**

21 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

22 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

23 **(LABOR CODE § 226.7 AND IWC WAGE ORDER 1-2001)**

24 38. Plaintiffs incorporate paragraphs 1 through 37 of this Complaint as though fully set  
25 forth herein.

26 39. Plaintiffs and Class Members are entitled to one hour of pay for each day that  
27 Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and  
28 IWC Wage Order 1-2001.



1 failed to maintain meal period records showing when meal periods were taken. This violates Labor  
2 Code §§ 226.7, 512, and 1174(d) and IWC Wage Order 1-2001.

3 45. Pursuant to Labor Code §§ 226.7, 512, and 1174(d) and IWC Wage Order 1-2001,  
4 Plaintiffs seek the payment of all meal period compensation and wages which Plaintiffs and Class  
5 Members are owed, according to proof.

6 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

7 **VII.**

8 **FOURTH CAUSE OF ACTION**

9 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

10 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**

11 **EMPLOYEE WAGE STATEMENT PROVISIONS**

12 **(LABOR CODE § 226(a), (e))**

13 46. Plaintiffs incorporate paragraphs 1 through 45 of this Complaint as though fully set  
14 forth herein.

15 47. Section 226(a) of the California Labor Code requires Defendants to provide wage  
16 statements to employees. In those wage statements, Defendants must provide an accurate itemized  
17 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3)  
18 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-  
19 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee  
20 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period  
21 for which the employee is paid, (7) the name of the employee and only the last four digits of his or  
22 her social security number or an employee identification number other than a social security number,  
23 (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates  
24 in effect during the pay period and the corresponding number of hours worked at each hourly rate by  
25 the employee. Defendants have knowingly and intentionally failed to comply with Labor Code §  
26 226(a).

27 48. Defendants failed to issue Plaintiffs and members of the Class wage statements that  
28 fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiffs and Class

1 Members were not paid with all wages due, including all overtime and double-time wages due,  
2 premium meal and rest period wages due, and reporting time pay due, as detailed above, such that  
3 their wage statements failed to accurately set forth all gross wages earned, in violation of Labor Code  
4 § 226(a)(1), the total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in  
5 violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period  
6 and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9). Separately,  
7 Defendants paid Plaintiffs and Class Members shift differential wages (“Ca Shift Diff O”) at a rate of  
8 \$1.50 and meal period penalty wages (“Camealpenalty”) at a rate of \$1.00. When shift differential  
9 wages and meal period penalty wages are paid, among other categories of compensation, additional  
10 hours worked are listed on the wage statements that are already encompassed in the listed hours  
11 worked at the base rates of pay. Adding up the total hours worked as set forth on the wage statement  
12 does not yield the correct number of actual hours worked by the employee. It is impossible to ascertain  
13 total hours worked from the wage statements alone because of the multiple conflicting entries. The  
14 wage statements also separately violate Labor Code § 226(a)(9) because they list inaccurate rates of  
15 pay. For example, Plaintiffs’ wage statements include rate entries for “Ca Shift Diff O” at \$1.50 and  
16 “Camealpenalty” at \$1.00, both of which are inaccurate.

17 49. As a consequence of Defendants’ willful conduct in failing to provide Class Members  
18 with accurate itemized wage statements, Plaintiffs and members of the Class have been injured  
19 because they have not been paid all wages due and were issued wage statements which do not reflect,  
20 and fail to state, all information required by Labor Code § 226(a). The missing information cannot be  
21 discerned at all from the face of the wage statements themselves. As a result, Plaintiffs and Class  
22 Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual  
23 damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each  
24 violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and  
25 are entitled to an award of costs and reasonable attorneys’ fees pursuant to Labor Code § 226(h).

26 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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1 **VIII.**

2 **FIFTH CAUSE OF ACTION**

3 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

4 **KNOWING AND INTENTIONAL FAILURE TO KEEP REQUISITE PAYROLL**

5 **RECORDS (LABOR CODE § 1174(d))**

6 50. Plaintiffs incorporate paragraphs 1 through 49 of this Complaint as though fully set  
7 forth herein.

8 51. Pursuant to California Labor Code § 1174(d), an employer shall keep, at a central  
9 location in the state or at the plants or establishments at which employees are employed, payroll  
10 records showing the hours worked daily by and the wages paid to, and the number of piece-rate  
11 units earned by and any applicable piece rate paid to, employees employed at the respective plants  
12 or establishments. These records shall be kept in accordance with rules established for this purpose  
13 by the commission, but in any case shall be kept on file for not less than two years.

14 52. Defendants have intentionally and willfully failed to keep accurate and complete  
15 payroll records showing the hours worked daily and the wages paid, to Plaintiffs and the other Class  
16 Members.

17 53. As a result of Defendants' violation of California Labor Code § 1174(d), Plaintiffs  
18 and the other Class Members have suffered injury and damages to their statutorily-protected rights.

19 54. More specifically, Plaintiffs and the other Class Members have been injured by  
20 Defendants' intentional and willful violation of California Labor Code section 1174(d) because they  
21 were denied both their legal right and protected interest, in having available, accurate and complete  
22 payroll records pursuant to California Labor Code section 1174(d).

23 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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1 IX.

2 SIXTH CAUSE OF ACTION

3 PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

4 FAILURE TO REIMBURSE EXPENSES (LABOR CODE §§ 2800 AND 2802)

5  
6 55. Plaintiffs incorporate paragraphs 1 through 54 of this Complaint as though fully set  
7 forth herein.

8 56. Pursuant to California Labor Code §§ 2800 and 2802, Defendants are required to fully  
9 reimburse Plaintiffs and Class Members for all out-of-pocket expenses incurred by them in the  
10 performance of their job duties.

11 57. As a proximate result of the aforementioned violations, Plaintiffs and members of the  
12 Class have been damaged in an amount according to proof at the time of trial.

13 58. Pursuant to Labor Code §§ 2800 and 2802, Plaintiffs and members of the Class are  
14 entitled to recover from Defendants the full amount of the expenses they incurred in the performance  
15 of their job duties that have not been reimbursed, plus interest, reasonable attorney’s fees, and costs  
16 of suit.

17 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

18 X.

19 SEVENTH CAUSE OF ACTION

20 PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

21 FAILURE TO TIMELY PAY WAGES DUE AT SEPARATION OF EMPLOYMENT

22 (LABOR CODE §§ 201-203)

23 59. Plaintiffs incorporate paragraphs 1 through 58 of this Complaint as though fully set  
24 forth herein.

25 60. California Labor Code § 201 and § 202 require Defendants to pay employees all wages  
26 due within 72 hours after resignation of employment or the day of termination of employment. Labor  
27 Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,  
28



1 as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full  
2 or an action is commenced. The penalty cannot exceed 30 days of wages.

3 61. More than 30 days have passed since Plaintiffs and certain Class Members have left  
4 Defendants' employ.

5 62. As a consequence of Defendants' willful conduct in not paying wages owed timely  
6 upon separation of employment, Plaintiffs and certain Class Members are entitled to up to 30 days'  
7 wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at  
8 separation of employment.

9 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

10 **XI.**

11 **EIGHTH CAUSE OF ACTION**

12 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

13 **FAILURE TO PAY ALL WAGES DUE DURING EMPLOYMENT (LABOR CODE § 204)**

14 63. Plaintiffs incorporate paragraphs 1 through 62 of this Complaint as though fully set  
15 forth herein.

16 64. California Labor Code § 204 provides that all wages earned by any person in any  
17 employment between the 1<sup>st</sup> and 15<sup>th</sup> days, inclusive, of any calendar month, other than those wages  
18 due upon termination of an employee, are due and payable between the 16<sup>th</sup> and the 26<sup>th</sup> day of the  
19 month during which the labor was performed.

20 65. California Labor Code § 204 provides that all wages earned by any person in any  
21 employment between the 16<sup>th</sup> and the last day, inclusive, of any calendar month, other than those  
22 wages due upon termination of any employee, are due and payable between the 1<sup>st</sup> and the 10<sup>th</sup> of  
23 the following month.

24 66. California Labor Code § 204 provides that all wages earned for labor in excess of the  
25 normal work period shall be paid no later than the payday for the next regular payroll period.

26 67. During the liability period, Defendants intentionally and willfully failed to pay  
27 Plaintiffs and the other Class Members all wages due to them, within any time period permissible  
28 under California Labor Code § 204.



1           74. Defendants have violated statutes and public policies. Through the conduct alleged  
2 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have  
3 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair  
4 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiffs,  
5 and all persons similarly situated, and all interested persons of rights, benefits, and privileges  
6 guaranteed to all employees under law.

7           75. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of  
8 §17200 *et seq.* of the Business & Professions Code.

9           76. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise  
10 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §  
11 17200 *et seq.* of the Business & Professions Code.

12           77. As a proximate result of the above-mentioned acts of Defendants, Plaintiffs and others  
13 similarly situated have been damaged in a sum as may be proven.

14           78. Unless restrained by this Court, Defendants will continue to engage in the unlawful  
15 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court  
16 should make such orders or judgments, including the appointment of a receiver, as may be necessary  
17 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or  
18 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited  
19 to, disgorgement of profits which may be necessary to restore Plaintiffs and Class Members to the  
20 money Defendants have unlawfully failed to pay.

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**XIII.**

**TENTH CAUSE OF ACTION**

**PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS  
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF  
LABOR CODE §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 551, 552, 1174(d), 1194, 1197,  
1197.1, 1198, 2800, AND 2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR  
VIOLATIONS OF LABOR CODE §§ 210, 218.5, 226.3, AND 558**

79. Plaintiffs incorporate paragraphs 1 through 78 of this Complaint as though fully set forth herein.

80. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiffs seek penalties pursuant to Labor Code § 2698 *et seq.* Further, Plaintiffs allege that Defendants fail to pay Plaintiffs and other Aggrieved Employees all wages timely during their employment, in violation of Labor Code §§ 204 and 210. Defendants paid Plaintiffs and other Aggrieved Employees on a bi-weekly basis, but failed to issue them their wages within seven calendar days of the conclusion of the payroll period, as required by Labor Code § 204(d). Instead, wages were issued eight or more days after the conclusion of the pay period. This subjects Defendants to penalties as authorized by Labor Code § 210.

81. For each such violation, Plaintiffs and all other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802; and
- b. Pursuant to Labor Code § 2699(a), the penalties set forth in Labor Code §§ 210, 218.5, 226.3, and 558.

82. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.





**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

Dated: May 6, 2022

Respectfully submitted,

GAINES & GAINES  
A Professional Law Corporation

By: \_\_\_\_\_  
DANIEL F. GAINES  
EVAN S. GAINES  
Attorneys for Plaintiff Corey Jones

Dated: May 6, 2022

LAWYERS *for* JUSTICE, PC

By: \_\_\_\_\_  
EDWIN AIWAZIAN  
Attorney for Plaintiff Eddie Fairley

Dated: May 6, 2022

MATERN LAW GROUP, PC

By: \_\_\_\_\_  
MATTHEW J. MATERN  
LAUNA ADOLPH  
KAYVON SABOURIAN  
Attorneys for Plaintiff Demetreia Gray

# **EXHIBIT B**



**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION**

**ALAMEDA COUNTY SUPERIOR COURT**

**To: All persons directly employed by DAA Draexlmaier Automotive of America LLC. and DAN Draexlmaier Automotive of America LLC. in a non-exempt position in California from May 11, 2016 to June 26, 2021.**

You are receiving this Notice because a proposed settlement has been reached in the following cases pending in the Superior Court of California, County of Alameda: (1) *Corey Jones v. DAA Draexlmaier Automotive of America LLC*, Case No. HG20062125; (2) *Eddie Fairley v. DAA Draexlmaier Automotive of America LLC and DAN Draexlmaier Automotive of America LLC*, Case No. RG20073122; and (3) *Demetrea Gray v. DAA Draexlmaier Automotive of America LLC*, Case No. RG20072329. These cases were consolidated as *Corey Jones, Eddie Fairley, Demetrea Gray v. DAA Draexlmaier Automotive of America LLC. and DAN Draexlmaier Automotive of America LLC.*, Case No. HG20062125 (the “Lawsuit”). You may be entitled to benefits as a member of the Settlement Class if the Court approves the Settlement described in this Notice. Your options with respect to the Settlement are explained in further detail below.

**THIS NOTICE AFFECTS YOUR LEGAL RIGHTS.**  
**PLEASE READ IT CAREFULLY.**

*This is not a solicitation from a lawyer. A Court has authorized this Notice.*

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT ARE:</b>	
<b>Do Nothing</b>	<b>If you want to participate and receive your share of the money from the settlement, you do <u>not</u> need to do anything. If you do nothing, you will be mailed a settlement payment and you will be releasing certain claims.</b>
<b>Object</b>	<b>If you want to object to the settlement, submit a letter in writing or appear at the final hearing and tell the Court the reason(s) why you think the settlement should not be approved.</b>
<b>Exclude Yourself</b>	<b>If you exclude yourself (or “opt-out”) from the class settlement, you will not receive any share of the money from the class settlement, but you will still be paid a share of the civil penalties recovered under the Private Attorneys General Act (PAGA) and be bound by a release of these claims for civil penalties.</b>

**YOUR RIGHTS AND OPTIONS AND THE DEADLINES TO EXERCISE**

THEM ARE EXPLAINED IN THIS NOTICE

**WHAT IS THIS NOTICE ABOUT?**

A proposed settlement (the “Settlement”) has been reached jointly between Plaintiffs Corey Jones, Eddie Fairley, and Demetrea Gray (collectively “Plaintiffs”) and Defendants DAA Draexlmaier Automotive of America LLC. (“DAA”) and DAN Draexlmaier Automotive of America LLC. (“DAN”) (collectively “Defendants”) in a consolidated proposed class action and Private Attorneys General Act (“PAGA”) action, pending in the Alameda County Superior Court, brought on behalf of all persons employed by Defendants in California as non-exempt employees at any time from May 11, 2016 through June 26, 2021 (the “Settlement Class”).

On **INSERT DATE**, the Court preliminarily approved the proposed Settlement and certified the Settlement Class for purposes of settlement only. You have received this Notice because Defendants’ records indicate that you are a member of the Settlement Class. This Notice is designed to inform you of how you can participate in the Settlement, request to be excluded from the non-PAGA portion of the Settlement (the “Class Settlement”), or object to the Class Settlement. **Unless you submit a request to be excluded from the Class Settlement, the Class Settlement, if finally approved by the Court, will be binding on you.**

**WHAT ARE THESE LAWSUITS ABOUT?**

On May 11, 2020, Mr. Jones, a former DAA employee, filed a wage and hour PAGA action against DAA in the Superior Court of California, Alameda County, Case No. HG20062125, on behalf of current and former non-exempt DAA employees who worked for DAA in California (the “*Jones Action*”).

On August 24, 2020, Mr. Gray, another former DAA employee, filed a separate wage and hour putative class action and PAGA action against DAA in the Superior Court of California, Alameda County, Case No. RG20072329, on behalf of current and former non-exempt DAA employees who worked for DAA in California (the “*Gray Action*”).

On September 3, 2020, Mr. Fairley, another former DAA employee, filed a separate wage and hour putative class action and PAGA action against DAA and DAN in the Superior Court of California, Alameda County, Case No. RG20073122, on behalf of current and former non-exempt DAA employees who worked for DAA in California (the “*Fairley Action*”).

On **INSERT DATE**, the Court consolidated the *Jones Action*, the *Gray Action*, and the *Fairley Action*, which make up the Lawsuit. Together, Plaintiffs allege Defendants failed to properly compensate employees for all time worked, including minimum wages and overtime, for missed meal and rest periods, and for sick pay; failed to reimburse business expenses incurred by employees; failed to timely pay wages during employment; failed to provide employees with accurate wage statements; failed to pay separated employees all compensation due in a timely manner; failed to keep requisite payroll records; and engaged in unfair competition. The Lawsuit seeks compensatory damages, liquidated damages, penalties, interest, and attorneys’ fees and costs, restitution, and injunctive relief.

Defendants deny all allegations in their entirety, vigorously maintain that Defendants pay their employees properly under the law, and asserted numerous affirmative defenses to the *Jones, Gray, and Fairley* allegations.

The parties conducted a significant investigation of the facts and law during the prosecution of the Lawsuit, including the exchange of information and documents. The parties held numerous meetings and informal conferences wherein they exchanged information and theories of the respective cases. The parties participated in a mediation and subsequent settlement discussions and reached the Settlement. The Settlement resolves all claims, and claims that could have been reasonably brought, in the Lawsuit.

This Settlement represents a compromise and settlement of highly disputed claims. Nothing in this Notice is intended or will be construed as an admission by Defendants that Plaintiffs' claims in the Lawsuit have merit or that Defendants has any liability to Plaintiffs or the Settlement Class on those claims.

The Parties and their counsel have concluded that the Settlement is fair, reasonable and adequate, considering the costs, interruptions, risks and uncertainties to each side of continued litigation and Plaintiffs and their counsel believe the Settlement is in the best interests of members of the Settlement Class ("Settlement Class Members").

#### **WHO IS INCLUDED IN THE SETTLEMENT?**

You are included in the Settlement Class if you fall within the following definition:

**All persons directly employed by DAA or DAN in a non-exempt position in California from May 11, 2016 through June 26, 2021.**

#### **WHO IS CLASS COUNSEL?**

Daniel Gaines, Alex Katofsky, and Evan Gaines of Gaines & Gaines, APLC, are counsel for Plaintiff Corey Jones; Matthew Matern, Launa Adolph, and Kayvon Sabourian, of Matern Law Group, PC, are counsel for Plaintiff Demetrea Gray; and Edwin Aiwazian, Joanna Gosh, and Charles Sweeny, of Lawyers for Justice, PC, are counsel for Plaintiff Eddie Fairley (together, "Class Counsel").

#### **SUMMARY OF THE SETTLEMENT**

#### **WHAT ARE THE BENEFITS OF THE SETTLEMENT?**

1. Defendants will pay a Gross Settlement Amount of \$1,475,000.00 to settle the Lawsuit. The Gross Settlement Amount will fund all payments to be made under the Settlement, including payments to the Settlement Class Members, the PAGA Payment to the PAGA Employees (those Class Members employed between May 11, 2019 and June 26, 2021)

and the Labor & Workforce Development Agency (“LWDA”), the employees’ (but not the employers’) portion of payroll taxes, and all court-approved deductions including settlement administration costs, attorney’s fees, costs, and the Named Plaintiff Enhancement Payments, as described below.

Following the court-approved deductions from the Gross Settlement Amount, the remaining amount will be the Class Payout Fund, which will be distributed to Settlement Class Members who do not timely request to be excluded from the Settlement. Distributions to Settlement Class Members (the “Class Member Payments”) will be made on a pro-rata basis, based on the number of pay periods each Settlement Class Member worked from May 11, 2016 through June 26, 2021 (“Settlement Period”).

2. A Settlement Class Member need not take any further action to receive a Class Member Payment.
3. Excluded from becoming Settlement Class Members are those employees who submit valid and timely requests for exclusion pursuant to the terms and procedures of this Notice. However, employees cannot exclude themselves from the PAGA portion of the Settlement.
4. **Court-Approved Deductions.** Should the Court approve the Settlement, the following court-approved deductions shall be made from the Gross Settlement Amount:
  - a. **Class Counsel’s Fees Award and Costs Award.** Class Counsel have represented and continue to represent the Settlement Class on a contingency-fee basis. That means that attorneys’ fees are paid only if money is recovered for the Settlement Class. It is common to award attorneys’ fees as a percentage of the settlement amount negotiated by the attorneys for the Settlement Class. As part of the final approval hearing, Class Counsel, will request up to 35% of the Gross Settlement Amount for their attorneys’ fees in connection with their work in this case (the “Fees Award”), and reimbursement of their reasonable litigation costs and expenses that were advanced by Class Counsel in connection with the Lawsuit, projected not to exceed \$ 60,000 (the “Costs Award”).
  - b. **Named Plaintiff Enhancement Payments.** In addition to their Class Member Payments as Settlement Class Members, Plaintiffs will seek approval from the Court for payments of \$10,000 each (for a total of \$30,000) in consideration for their service in initiating and pursuing the Lawsuit, and undertaking the risk of liability for attorneys’ fees and expenses in the event they were unsuccessful in the prosecution of the Lawsuit. These payments, if approved by the Court, will be paid from the Gross Settlement Amount.
  - c. **PAGA Payment.** The parties will seek approval from the Court to designate \$120,000 of the Gross Settlement Amount as penalties recoverable under PAGA (the “PAGA Payment”). 75% of this amount, or \$90,000, will be paid to the LWDA, as required by law. The remaining 25% of this amount, or \$30,000 (“PAGA Settlement”), will be distributed to all “PAGA Employees,” which

includes all persons employed by DAA or DAN in a non-exempt position in California from May 11, 2019 through June 26, 2021 (“PAGA Settlement Period”) on a pro-rata basis. This PAGA Payment is separate from and paid in addition to Class Member Payments.

- d. **Settlement Administration Costs.** If approved by the Court, the reasonable costs of administering the Settlement, including the fees and expenses of ILYM Group, Inc. (the “Settlement Administrator”), which are estimated to be approximately \$12,050, will be paid out of the Gross Settlement Amount (the “Settlement Administration Costs”).

### **How much is my Settlement Payment?**

**Your total estimated number of work weeks between May 11, 2016 and June 26, 2021 is \_\_\_\_\_ and pay periods between May 11, 2019 and June 26, 2021 is \_\_\_\_\_.**

**Your anticipated approximate Class Settlement Payment is \_\_\_\_\_ and your anticipated approximate share of the PAGA Settlement is \_\_\_\_\_.** The exact amounts of the Class Settlement Payment and PAGA Settlement share could vary, depending upon various factors, including (1) whether any Class Members dispute the number of pay periods credited to them; and (2) whether any additions or deletions are made to the number of Class Members. 50% of your Settlement Payment will be allocated as W-2 wages; 50% will be allocated as penalties and interest and expense reimbursement, subject to reporting on an IRS Form 1099 as required by law.

You are entitled to dispute the number of pay periods reported in this Notice. To submit a valid dispute, you must send a dated and signed letter stating you dispute the number of pay periods along with any supporting documentation, to the Claims Administrator so that it is **postmarked no later than \_\_\_\_\_, 2022 (45 days after this Notice was originally sent to you)**. Any dispute that is postmarked later than \_\_\_\_\_, 2022, will be late and invalid and will result in the Class Member being bound by the number of pay periods reported in this Notice.

### **WHAT HAPPENS IF THE COURT APPROVES THE SETTLEMENT?**

**Released Claims.** If the Court approves the proposed Settlement, it will enter a judgment as to all Settlement Class Members who do not timely request exclusion from the Settlement. This means that Settlement Class Members, including Plaintiffs Jones, Gray, and Fairley, who do not exclude themselves, will be barred from bringing their own lawsuits for recovery against the Released Parties for any and all “Settlement Class Release Claims,” which are defined as:

- All claims alleged in the Lawsuit, all claims arising from or related to the facts, theories, or claims alleged in the Lawsuit, and any claims which could have been asserted in the Lawsuit arising from the alleged facts, claims, theories, and/or primary rights alleged to have been invaded to the fullest extent permitted by law, that arose during the Settlement Period while a Settlement Class Member was classified by DAA as non-exempt, including, but not limited to:

- Unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, vacation or paid time off, reporting time compensation, for time spent donning and doffing work uniforms, for time spent waiting for and/or undergoing security checks, and to pay any such compensation at the regular rate of compensation, and/or interest; for missed, late, short or interrupted meal and/or rest periods or any allegation that meal or rest periods were not provided, including any claim for any alleged failure to pay premiums for missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation; for reimbursement for business expenses or any other claim that Defendants allowed or required employees to bear any of the costs associated with the operation of Defendants' business, including without limitation the use of personal cell phones, tools, remote working expenses, and electrical or other costs incurred in charging company property; for inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate records; for secret underpayment of wages; for failure to pay sick leave, including that sick leave was calculated at an incorrect rate of pay; for unfair business practices arising out of or related to any or all of the aforementioned claims; for penalties arising out of or related to any or all of the aforementioned claims, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and for attorneys' fees and costs; and
- Any and all claims related to violations of the Wage Orders of the California Industrial Welfare Commission; and/or alleging a violation of the California Labor Code, including, but not limited to §§ 200, 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 222.5, 223, 226, 226.3, 226.7, 226.8, 227.3, 246, 246.5, 510, 511, 512, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800, 2802, and derivative claims under California Business & Professions Code Sections 17200 *et seq.*

Released PAGA Claims. In addition, if the Court approves the proposed Settlement, then Plaintiffs Jones, Gray, and Fairley, as representatives of the State of California and on behalf of the LWDA and the PAGA Employees, will fully and finally release the Released Parties from any and all "PAGA Released Claims," which are defined as:

- All claims under the PAGA associated with any and all claims under PAGA arising from or related to the facts, theories, or claims alleged in the Lawsuit, including but not limited to, claims under the Private Attorneys General Act, California Labor Code § 2698, *et seq.*, that arose during employment by Defendants in California in non-exempt or hourly-paid positions during the PAGA Period for:
- Civil penalties for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, vacation or paid time off, reporting time compensation, for time spent donning and doffing work uniforms, for time spent waiting for and/or undergoing security checks, and to pay any such compensation at the regular rate of compensation, and/or interest; for missed, late, short or interrupted meal and/or rest periods or any allegation that meal or rest periods were not provided, including any claim for any alleged failure to pay premiums for missed, late,

short or interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation; for reimbursement for business expenses or any other claim that Defendants allowed or required employees to bear any of the costs associated with the operation of Defendants' business, including without limitation the use of personal cell phones, tools, remote working expenses, and electrical or other costs incurred in charging company property; for inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate records; for secret underpayment of wages; for failure to pay sick leave, including that sick leave was calculated at an incorrect rate of pay; for unfair business practices arising out of or related to any or all of the aforementioned claims; for penalties arising out of or related to any or all of the aforementioned claims, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and for attorneys' fees and costs. the claims released by the PAGA Aggrieved Employees also include any and all claims under the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* that arise out of or arise in connection with the claims and facts alleged in the Lawsuit, and any claims which could have been asserted in the Lawsuit arising from the alleged facts, theories, and/or primary rights alleged to have been invaded to the fullest extent permitted by law; and

- Any and all claims under the PAGA related to violations of the Wage Orders of the California Industrial Welfare Commission; and/or alleging a violation of California Labor Code, including, but not limited to §§ 200, 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 222.5, 223, 226, 226.3, 226.7, 226.8, 227.3, 246, 246.5, 510, 511, 512, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800, and 2802.

The release of claims set forth in the Settlement excludes the release of claims not permitted by law.

#### **WHAT HAPPENS IF THE COURT DOES NOT APPROVE THE SETTLEMENT?**

If the Court does not approve the proposed Settlement, the Lawsuit will proceed as if no settlement has been attempted and there can be no assurance that the Settlement Class Members will recover more than is provided for in the Settlement or anything at all.

#### **WHEN IS THE FINAL SETTLEMENT APPROVAL HEARING?**

A hearing will be held before the Honorable Paul D. Herbert of the Alameda County Superior Court on **INSERT DATE AND TIME**, in Department 20, 1221 Oak Street, Oakland, CA 94612. The purpose of the hearing is for the Court to determine final approval of the Settlement along with the amount properly payable for (i) the Fees Award and Costs Award, (ii) Named Plaintiff Enhancement Payments, (iii) the Settlement Administration Costs, (iv) Class Member Payments; and (v) the PAGA Payments. **The time and date of this hearing may be changed without further notice. Settlement Class Members are advised to check the Settlement website at [www.████████.████████.com](http://www.████████.████████.com) or the Court's website, detailed below, to confirm that the date and/or time of the hearing has not been changed.**

**Will my decision about whether to participate in the Settlement affect my employment with DAA or DAN?**

No. Defendants are prohibited by law from retaliating against any employee for participating in this Settlement.

**Should I get my own lawyer in this case?**

The Court has approved the law firms of Gaines & Gaines, APLC, Lawyers for Justice, PC, and Matern Law Group, PC, as Class Counsel. Class Counsel represents you and all Settlement Class Members in the Lawsuit. You also have the right to hire an attorney (at your own cost) to represent you, or to enter an appearance and represent yourself.

**WHAT ARE MY OPTIONS REGARDING THE SETTLEMENT?**

If you are receiving this Notice, you have the following options:

- **Participate Fully in the Settlement:** To receive a monetary payment from this settlement, Settlement Class Members are not required to do anything.
- **Request to be Excluded:** Settlement Class Members who wish to exclude themselves from the Settlement Class must submit a signed, written statement requesting exclusion from the Settlement Class on or before **INSERT DATE**. The opt-out request must state, in substance that you “wish to opt out of the Settlement Class in *Jones et al. v. DAA Draexlmaier of America LLC and DAN Draexlmaier Automotive North America LLC*, Case No. HG20062125. I understand that by requesting to be excluded from the Settlement Class, I will not receive a Class Member Payment. I also understand that I will still receive a PAGA Payments for my share of the PAGA Settlement because I cannot object or exclude myself from the PAGA Settlement.”

Such written request for exclusion must contain the name, address, telephone number and last four digits of the Social Security number of the individual requesting exclusion and the years of his or her employment by Defendants; must be returned by mail to the Settlement Administrator at the following address: **INSERT ADDRESS**; must be signed by the individual requesting exclusion; and must be postmarked on or before **[Objection/Exclusion Deadline Date]**. **The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted.** Any person who opts-out of the Settlement Class will not be entitled to any recovery under the Class Settlement and will not be bound by the Class Settlement or have any right to object, appeal or comment thereon. Absent good cause found by the Court, individuals who fail to submit a valid and timely request for exclusion on or before **[Objection/Exclusion Deadline Date]** shall be Settlement Class Members and shall be bound by all terms of the Settlement and any final judgment entered in the Lawsuit if the Settlement is approved by the Court. Employees cannot opt-out or exclude themselves from the PAGA portion of the Settlement.



- **Object.** You can ask the Court to deny approval of the Settlement by filing an objection. **You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement.** If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you may send a letter to the Settlement Administrator at **INSERT ADDRESS**, which should be postmarked no later than **[Objection/Exclusion Deadline Date]** and must reference *Jones, et al. v. DAA Draexlmaier of America LLC, et al.*, Case No. HG20062125; contain a statement in substance explaining that you object to the Class Settlement and the reasons for objecting; and, contain your full name, address, telephone number, last four digits of your Social Security number, and your signature. You may also appear at the final settlement approval hearing on **INSERT DATE AND TIME** in Department 20, 1221 Oak Street, Oakland, CA 94612, to tell the Court why you don't agree with the Settlement. You are urged to submit facts and evidence to support your position.

**All objections, requests to appear or other documents from Settlement Class Members should be sent to the Settlement Administrator, who then packages the documents for counsel and the court.**

If the Settlement Class Member satisfies the requirements to object to the Settlement, he or she may opt to appear at the Final Approval Hearing *pro se* or through his or her own attorney. Where the Settlement Class Member opts to appear through his or her own attorney, he or she is responsible for hiring and paying that attorney. Even if the Settlement Class Member does not timely submit a written objection to the Settlement Administrator, the Settlement Class Member may appear (or their representative may appear on their behalf) at the Final Approval Hearing to present to the Court oral objections or concerns with the Settlement, so long as the Settlement Class Member provides written notice, which may be by email, to Class Counsel, Defense Counsel, and the Court no later than 10:00 a.m. two days prior to the date of the Final Approval Hearing of your intent to appear at the Final Approval Hearing. You are urged to submit facts and evidence to support your position.

The Parties will be permitted to respond in writing to such objections prior to the Final Approval hearing. Absent good cause found by the Court, Settlement Class Members who fail to file and serve timely written objections in the manner specified above shall remain Settlement Class Members and shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

**COUNSEL FOR THE PARTIES MAY BE CONTACTED AT THE ADDRESSES  
BELOW:**

**DEFENSE COUNSEL**

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Brian Fong  
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**ARE THERE MORE DETAILS AVAILABLE?**

This notice summarizes the proposed Settlement Agreement. For the precise terms and conditions of the settlement, please see the Settlement Agreement of Class Action and Private Attorneys General Act Claims (the “Settlement Agreement”), which is available at [www. .com](http://www. .com). You may also obtain a copy of the Settlement Agreement by contacting Class Counsel at the addresses above. The pleadings and other records in this litigation may be examined online on the Alameda County Superior Court’s website, known as ‘eCourt Public Portal,’ at <https://eportal.alameda.courts.ca.gov/>. After arriving at the website, click the ‘Searches’ link, the ‘Case Number Search’ link, and then enter “HG20062125” as the case number and click ‘Search.’ Images of every document filed in the case may be viewed through the ‘Register of Actions’ at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.

For any additional inquiries concerning this case, you may also contact the Settlement Administrator, [.](mailto: .) , at [INSERT CONTACT INFORMATION](mailto: .).

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE  
TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**