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

FRANCISCO CALDERON, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

SMILEDIRECTCLUB, LLC, a Tennessee
limited liability company; JEFFREY
SULITZER, D.M.D., PROFESSIONAL
CORPORATION, a California corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No. 20STCV03799

*[Assigned for all purposes to the Hon. Yvette M.
Palazuelos, Dept. SSC-9]*

**DECLARATION OF ELIZABETH NGUYEN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: May 17, 2021
Time: 10:00 a.m.
Dept.: SSC-9

Complaint Filed: January 30, 2020
Trial Date: None

1 I, ELIZABETH NGUYEN, declare as follows:

2 1. I am a shareholder of the law firm Lidman Law, APC, and counsel for the named Plaintiff
3 Francisco Calderon ("Plaintiff") and the proposed Settlement Class in the above-captioned matter. I am
4 a member in good standing of the bar of the State of California and am admitted to practice in this Court.
5 I have personal knowledge of the facts stated in this declaration and could testify competently to them if
6 called upon to do so.

7 2. I am a 2005 graduate of Loyola Law School. During law school, I worked as an extern for
8 the Honorable Erithe A. Smith, U.S. Bankruptcy Court for the Central District of California. During law
9 school, I also worked as a law clerk in the Enforcement Unit of the Office of the Chief Trial Counsel for
10 the State Bar of California.

11 3. Since graduating from law school, my practice has focused almost exclusively on
12 employment litigation. In October 2007, I began working as an associate attorney at the international law
13 firm of Littler Mendelson P.C., at its Los Angeles office, which according to its website is the "largest
14 law firm in the world exclusively devoted to representing management in employment, employee benefits
15 and labor law matters."

16 4. In June 2012, I left Littler Mendelson to work at the Los Angeles office of Reed Smith
17 LLP. During my employment at Reed Smith, I worked exclusively in the labor and employment practice
18 group. In June 2013, I returned to Littler Mendelson as an associate attorney, was promoted to Shareholder
19 in 2015, and was elevated to participating Shareholder in 2017. Since October 2007, my practice has been
20 and continues to be exclusively labor and employment law, with a strong emphasis on wage and hour
21 class actions venued in both state and federal courts. During this time period and my legal career in
22 general, I also worked on a number of single and multi-plaintiff wage and hour matters as well. During
23 my employment at Littler Mendelson, I was a member of its Class Action Practice Group.

24 5. During my employment at Littler Mendelson, I played a significant role in the class actions
25 that I was staffed on, and was primarily responsible for managing the litigation both in my role as a Senior
26 Associate and as a Shareholder. In particular, I received a wide-array of wage and hour class action
27 experience performing the following types of tasks: drafting demurrers, motions to strike and/or dismiss;
28 removing actions from state court to federal court; drafting and responding to written discovery; drafting

1 and opposing discovery related motions; arguing discovery related motions; drafting motions to
2 consolidate related matters; interviewing putative class members and obtaining declarations in connection
3 with class certification; drafting oppositions to motions for class certification; conducting exposure
4 analyses to assess the strengths and weaknesses of asserted claims, the likelihood of prevailing at class
5 certification and potential damages resulting from such claims; drafting mediation briefs; serving as the
6 primary contact to in-house counsel; deposing named plaintiffs and putative class members; deposing
7 retained expert witnesses; and defending the depositions of corporate witnesses. I also was involved in
8 the negotiations and settlements of many large wage and hour class actions. In short, I played an integral
9 role in all aspects of litigation from the inception of a matter through and beyond class certification. I also
10 supervised the work of several associate attorneys who were staffed on the same wage and hour class
11 actions.

12 6. Although not exhaustive, below is a list of many of the wage and hour class and PAGA
13 actions that I performed substantial work on while I was an Associate and/or Shareholder at Littler
14 Mendelson:

- 15 ► *Branch v. PM Realty Group, Inc.* Case No. BC575759, Los Angeles Superior
16 Court, County of Los Angeles, Honorable Ann Jones, presiding.
- 17 ► *Herrera v. Pharmavite, LLC*, Case No. BC599201, Los Angeles Superior Court,
18 County of Los Angeles, Honorable Judge Carolyn Kuhl, presiding.
- 19 ► *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx, United
20 States District Court, Central District of California, Honorable Judge Percy
21 Anderson, presiding.
- 22 ► *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx, United
23 States District Court, Central District of California, Honorable Judge Percy
24 Anderson, presiding.
- 25 ► *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932, California
26 Superior Court, County of Los Angeles, Honorable Judge Jane Johnson, presiding.¹

27
28 ¹ This matter was consolidated and litigated collectively with Case Nos. BC380923, BC 381523 and BC 406663.

- 1 ▶ *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346, California
2 Superior Court, County of Orange, Honorable Judge Thierry Patrick Colaw,
3 presiding.
- 4 ▶ *Page v. Luxottica Retail North America, Inc.*, Case No. FCS041512, California
5 Superior Court, County of Solano, Honorable Judge Paul Berman, presiding.
- 6 ▶ *Parker v. FedEx National LTL, Inc.*, Case No. 11-CV-006380-DSF-FFM, United
7 States District Court, Central District of California, Honorable Judge Dale Fischer,
8 presiding.
- 9 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
10 States District Court, Central District of California, Honorable Judge Margaret
11 Morrow, presiding.
- 12 ▶ *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United States
13 District Court, Central District of California, Honorable Judge Margaret Morrow,
14 presiding.
- 15 ▶ *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-CTL,
16 California Superior Court, County of San Diego, Honorable Judge Jeffrey B.
17 Barton, presiding.
- 18 ▶ *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California Superior
19 Court, County of Santa Clara.
- 20 ▶ *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California Superior Court,
21 County of Los Angeles, Honorable Judge Terry Green, presiding.
- 22 ▶ *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California Superior
23 Court, County of San Francisco.
- 24 ▶ *Robertson v. FedEx National LTL, Inc.*, Case No. 09-CV-05016-DSF-FFM, United
25 States District Court, Central District of California, Honorable Judge Dale Fischer,
26 presiding.

1 ► *Wittman v. FedEx National LTL, Inc.*, Case No. 09-CV-03663-DSF-FFM, United
2 States District Court, Central District of California, Honorable Judge Dale Fischer,
3 presiding.

4 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to start a law firm
5 with another former Littler Mendelson Shareholder, Scott M. Lidman, to represent employees with work-
6 related claims, including primarily wage and hour claims and almost exclusively on a class-action basis.
7 I am currently a Shareholder of Lidman Law, APC. Currently, over ninety percent (90%) of my practice
8 is dedicated exclusively to the prosecution of wage and hour class actions, and I am currently responsible
9 for prosecuting over sixty-five (65) wage and hour class actions filed in State courts throughout
10 California, with several of them having been removed to Federal courts. I believe that my professional
11 experience renders me more than qualified to serve as class counsel in this lawsuit involving claims of
12 underpaid overtime and minimum wages, meal and rest period violations, and derivative penalty claims.
13 Not only have I litigated dozens of wage and hour cases throughout my career involving similar claims,
14 including the wage and hour class actions identified above, I have litigated similar claims from both
15 plaintiff and defense perspectives. As a result, I am able to realistically assess and evaluate the facts and
16 legal arguments that can be made in pursuit and defense of similar wage and hour claims, as well as those
17 facts and arguments in support and in opposition to class certification. Consequently, I am able to
18 appreciate the significant risks, uncertainties, and delay involved in wage and hour class action litigation.

19 8. I have been appointed Class Counsel in: *Guardado v. Wesley Allen, Inc.*, Case No.
20 BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl
21 presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court, County of Los
22 Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances, Inc.*, Case No. 30-2017-
23 00964213-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Cluster
24 presiding; *Hanke v. C&W Facility Services, Inc.*, Case No. CIVDS1814412, California Superior Court,
25 County of San Bernardino, Honorable Judge David Cohn presiding; *Molina v. Mader News, Inc.*, Case
26 No. BC685960, California Superior Court, County of Los Angeles, Honorable Judge Yvette M.
27 Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc.*, Case No. BC688326, California
28 Superior Court, County of Los Angeles, Honorable Judge William F. Highberger presiding; *Rodriguez*

1 v. *H.F. Cox, Inc.*, Case No. BC653164, California Superior Court, County of Los Angeles, Honorable
2 Judge Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California
3 Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Teran v. Western*
4 *Plastics, Inc.*, Case No. RIC1722619, California Superior Court, County of Riverside, Honorable Judge
5 Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc.*, Case No. BC688477,
6 California Superior Court, County of Los Angeles, Honorable Judge Daniel J. Buckley presiding; *Huynh*
7 *v. Polypeptide Laboratories, Inc.*, Case No. BC680872, California Superior Court, County of Los
8 Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Guzman v. Century Blinds*, Case No.
9 RIC1723654, California Superior Court, County of Riverside, Honorable Judge Sunshine S. Sykes
10 presiding; *George v. Convergence Marketing*, Case No. CIVDS1901039, California Superior Court,
11 County of San Bernardino, Honorable Judge David S. Cohn presiding; *Coffee, et al. v. Flyers*
12 *Transportation Energy, LLC*, Case No. 34-2017-00222084, California Superior Court, County of
13 Sacramento, Honorable Judge Alan G. Perkins presiding *Romero v. Fillmore Hospitality, LLC*, Case No.
14 BC705667, California Superior Court, County of Los Angeles, Honorable Judge Maren E. Nelson
15 presiding; *Wennerstrom, et al. v. Giant Inland Empire R.V. Center*, Case No. CIVDS1617291, California
16 Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Contreras, et al.*
17 *v. Letter Ride, LLC*, Case No. 37-2018-00020841-CU-OE-CTL, California Superior Court, County of
18 San Diego, Honorable Judge Eddie C. Sturgeon presiding; *Davis v. WeDriveU*, Case No. 18CV322578,
19 California Superior Court, County of Santa Clara, Honorable Judge Brian C. Walsh presiding; *Acuna v.*
20 *Canton Food Co., Inc.*, Case No. BC685001, California Superior Court, County of Los Angeles,
21 Honorable Judge David S. Cunningham presiding; and *Contreras v. Worldwide Flight Services, Inc.*,
22 Case No. 2:18-cv-06036-PSG-SS, United States District Court for the Central District of California, the
23 Honorable Judge Philip S. Gutierrez presiding.

24 9. As co-lead counsel for Plaintiff Francisco Calderon and the proposed Settlement Class, I
25 have been intimately involved in every aspect of this case from its inception through the present, and I
26 believe that the proposed Settlement is a favorable result for the Settlement Class Members under the
27 circumstances presented.

28 10. According to their website, Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer,

1 D.M.D., Professional Corporation (hereinafter collectively referred to as “SmileDirect” or “Defendants”)
2 are the first digital brand for straightening teeth and operate various locations known as SmileShops
3 throughout California and also represent 95% of the doctor-directed at-home clear aligner industry. On
4 January 30, 2020, Plaintiff filed a class action complaint against Defendants in Los Angeles County
5 Superior Court. On January 30, 2020, Plaintiff sent a letter to the California Labor Workforce
6 Development Agency (“LWDA”) regarding Defendants’ alleged Labor code violations, as a prerequisite
7 to filing a claim under the California Private Attorney General Act (“PAGA”). A true and correct copy
8 of Plaintiff’s January 30, 2020 letter to the LWDA is attached hereto as **Exhibit 2**. On April 6, 2020,
9 Plaintiff filed a First Amended Class and Representative Action Complaint adding a cause of action for
10 civil penalties under the PAGA. Pursuant to the terms of the Settlement Agreement, subject to Court
11 approval, the Parties stipulated to allow Plaintiff to file a Second Amended Complaint Class and
12 Representative Action Complaint (“SAC”) adding a cause of action for Defendants’ failure to timely pay
13 all wages upon separation of employment. In connection with Plaintiff’s waiting time penalty claims, on
14 December 9, 2020, Plaintiff also submitted a supplemental letter to the LWDA regarding his intent to
15 pursue an action under the PAGA based on violation of Labor Code section 203. A true and correct copy
16 of Plaintiff’s December 9, 2020 letter to the LWDA is attached hereto as **Exhibit 3**. Sixty-five days has
17 now passed since Plaintiff submitted the supplemental letter to the LWDA and Plaintiff has not received
18 a response from the LWDA about this matter. Thus, in order to effectuate the terms of the Settlement
19 Agreement, Plaintiff also seeks leave from the Court to file the SAC, which is attached as Exhibit A to
20 the Settlement Agreement. Therefore, Plaintiff’s primary allegations are that Defendants: (1) failed to
21 pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) failed to provide all legally
22 required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to
23 provide accurate, itemized wage statements; (6) failed to timely pay all wages upon separation of
24 employment; (7) engaged in unlawful business practices; and (8) is liable for civil penalties under the
25 Labor Code Private Attorneys General Act of 2004 (“PAGA”).

26 11. After agreeing to participate in early mediation, Defendants informally produced time
27 records and payroll data for the putative class, as well as its wage and hour policies and other relevant
28 documents and information relevant to the claims alleged in advance of mediation. Plaintiff retained an
expert to conduct an analysis of the payroll data and time records produced by Defendants. After the

1 detailed review of the payroll and time records and other documents and policies produced by Defendants,
2 Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses
3 of Plaintiff's case. This discovery also allowed the Parties to discuss the strengths and weaknesses of
4 Plaintiff's contemplated waiting time penalty claim and Plaintiff's various theories of liability on his
5 claim. This discovery allowed the parties to assess the merits and value of Plaintiff's claims and
6 Defendants' defenses thereto, if a settlement could not be reached.

7 12. On November 10, 2020, after extensive research and analysis, including a detailed analysis
8 of Defendants' potential exposure by Plaintiff's retained expert who holds a Ph.D. in economics, a full-
9 day mediation was held with Jeffrey Krivis, Esq., a well-respected wage and hour class action mediator.
10 During mediation, the parties vigorously debated their opposing legal positions, the likelihood of
11 certification of Plaintiff's claims, as well as the legal basis for the claims and defenses. As part of the
12 negotiations and settlement discussions, the Parties agreed that Plaintiff would file a Second Amended
13 Complaint which adds a claim for failure to timely pay all final wages upon termination. After a full day
14 mediation, the Parties reached agreement and executed a Memorandum of Understanding ("MOU").
15 Thereafter, the Parties signed the Stipulation of Settlement ("Settlement"). A true and correct copy of the
16 Settlement is attached hereto as **Exhibit 1**. The proposed Second Amended Class and Representative
17 Action Complaint ("SAC") is attached to the Settlement as Exhibit A. The proposed Notice of Pendency
18 of Class Action and Proposed Settlement and Notice of Individual Settlement Award are attached as
19 Exhibit B to the Settlement.

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13. If the Court approves this Settlement, Defendants will pay a Gross Settlement Amount (“GSA”) of \$650,000.00. The Settlement is non-reversionary. Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *See* Settlement, ¶ 6. The monetary terms of the Settlement are summarized below:

Gross Settlement Amount (“GSA”):²	\$650,000.00
Minus Court-approved attorneys’ fees (1/3 of GSA):	\$216,666.66
Minus Court-approved, verified costs (up to):	\$35,000.00
Minus Court-approved Class Representative Enhancement:	\$5,000.00
Minus Settlement Administration Costs:	\$7,250.00
Minus PAGA payment to the LWDA:	\$22,500.00
Net Settlement Amount (“NSA”):	\$363,583.34

Defendants shall pay the Gross Settlement Amount within thirty (30) days of the Effective Date. The “Effective Date” is defined as the latter of: (a) the expiration of any appeal period following the Court’s final approval of the Settlement (at or following the Final Approval Hearing) and entry of a Final Judgment and Order Approving Settlement in the same or substantially the same form as Exhibit C³ (“Judgment”); or (b) the final resolution of any appeal that has been filed, with the California Court of Appeal or the California Supreme Court rendering a final judgment affirming the Court’s final approval of the Settlement without material modification. *See* Settlement, ¶ 6.B. After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the Settlement requires Defendants to pay a Net Settlement Amount (“NSA”) of at least **\$363,583.34** to all Settlement Class members who do not timely opt out. Pursuant to the terms of the Settlement, Defendants will have the option of rescinding the Settlement if more than 10% of the Settlement Class opts out of the Settlement and all

² Defendants represents that there are an estimated 11,463 workweeks during the Class Period. If the number of workweeks during the Class Period is more than 10% greater than this figure (i.e., if there are 12,609 or more workweeks worked by the Settlement Class members), Defendants agree to increase the GSA on a proportional basis (i.e., if there was 10% increase in the number workweeks during the Class Period, Defendants would agree to increase the GSA by 10%). However, instead of increasing the GSA if this escalator clause is triggered, Defendants retain the option to end the Class Period and release period as of the date that the increase in workweeks reaches 12,609 without any increase in the GSA. *See* Settlement ¶ 13.

³ Exhibit C to the Settlement Agreement (Exhibit 1).

actions taken in furtherance of it will thereby be null and void. *See* Settlement ¶ 15. This amount includes the \$7,500.00 PAGA Amount to be paid to the Settlement Class Members.

14. According to Defendants, there are approximately 277 total Settlement Class members defined as:

All current and former non-exempt, hourly, employees of Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation who worked in California at any time from November 8, 2017 through the date of preliminary approval.

Thus, the average Settlement Award is projected to be approximately \$1,321.58, a fair recovery per person.

15. Settlement Class members' claims arise from Defendants' common, uniform policies and practices that applied to Settlement Class members during the class period. Specifically, Plaintiff alleged that Defendant's common and uniform policies and practices resulted in the following violations: (1) failure to pay all overtime wages owed; (2) failure to pay all minimum wages owed; (3) failure to provide all legally required meal periods; (4) failure to authorize and permit all legally required rest periods; (5) failure to provide accurate, itemized wage statements; (6) failure to timely pay all wages upon separation; (7) unlawful business practices; and (8) liability for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA").

16. As described in the accompanying Motion for Preliminary Approval, Plaintiff alleges that he and Settlement Class Members were not fully paid for time worked. Specifically, Plaintiff alleges that Defendants would keep track of Plaintiff's time worked and would unlawfully round/shave Plaintiff's work time such that Plaintiff would not be fully paid for all time worked. This time-shaving and/or rounding practice utilized by Defendants was not even-handed over time and would almost exclusively round and shave in Defendants' favor such that Plaintiff was routinely underpaid for all his time worked. Based a review of the time punch data and payroll records, Plaintiff's retained expert, who holds a Ph.D. in economics, calculated Defendants' maximum exposure at approximately \$11,065.00.

17. Defendants contend that they compensated non-exempt employees for all of their time worked and that the time punch data would necessarily include minutes that were not compensable work time because the employee would not start performing any work prior to the start of the shift and/or

1 would not perform any work after the scheduled stop time. Defendants also contend that they only
2 rounded during a portion of the relevant time period and their rounding practices were lawful, Defendants
3 further contend any unpaid time was *de minimis* and therefore non-compensable. Defendants further
4 assert that Plaintiff would be unable to certify a rounding or off-the-clock claim given the individualized
5 inquiries that would be required, given that Defendants rounding mechanism was, according to
6 Defendants, allegedly favored the employees. Based on these risks, Plaintiff discounted the maximum
7 exposure by 5% for the risk of non-certification, and an additional 5% to account for Defendants'
8 defenses on the merits to arrive at an estimated exposure of \$9,986.16.

9 18. Plaintiff alleges that he and Settlement Class Members were not provided with all legally-
10 required off-duty meal periods beginning before the end of the fifth hour of work. Specifically, Plaintiff
11 contends that due to his job duties, he was often prevented from taking meal periods that commenced
12 before the end of the fifth hour of work and/or a meal period altogether. Therefore, Plaintiff calculated
13 Defendants' maximum exposure for the alleged meal period violations at approximately \$181,722.50
14 (38,437 shifts over 6.0 hours x 22% [violation rate] x \$21.49 [average hourly rate]).

15 19. Defendants counter that they have always provided non-exempt employees with an
16 opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in
17 employee timekeeping records were solely the result of employee choice, rather than any policy or practice
18 of Defendants. Furthermore, Defendants counter that the time records reflect compliant meal periods.
19 Defendants also point out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004,
20 they are only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are
21 taken, and that they have always done so. Finally, Defendants contend Plaintiff's meal period claim is
22 not suited for class certification, since individual inquiries would be required to assess which employees
23 took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons
24 why a particular employee took a non-compliant meal period or missed a meal period during a particular
25 shift. Accordingly, Plaintiff discounted the maximum exposure by 10% for the risk of non-certification,
26 and an additional 5% to account for Defendants' defenses on the merits to arrive at an estimated exposure
27 of \$155,372.74.

28 20. Plaintiff alleges that he and other Settlement Class Members were not authorized and
permitted to take all required rest periods due to Defendants' rest period policies/practices which fail to

1 authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Specifically,
2 during the shifts when Plaintiff worked alone, Defendants' policy and practice prohibited him from taking
3 any rest periods. Accordingly, Plaintiff calculated Defendants' maximum exposure at \$1,024,235 (47,661
4 shifts over 3.5 hours x \$21.49 [average hourly rate]).

5 21. Defendants contend they have always maintained and enforced lawful rest period policies
6 and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
7 periods in compliance with California law. Defendants argue that their policy and practices was to
8 schedule two to three employees to work in any given shift. Therefore, Defendants argue Plaintiff's rest
9 period theory of liability is inherently unsuited for class treatment because it was uncommon for the
10 proposed Settlement Class Members to solely work alone during their shift. In addition, Defendants argue
11 this claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether
12 each Settlement Class member was in fact authorized and permitted to take a compliant rest period, which
13 would devolve into an unmanageable series of mini-trials. Accordingly, Plaintiff discounted the
14 maximum exposure by 20% for the risk of non-certification, and an additional 15% to account for
15 Defendants' defenses on the merits to arrive at an estimated exposure of \$696,479.80.

16 22. Plaintiff further alleges that Defendants issued inaccurate wage statements in violation of
17 Labor Code § 226 as a result of the alleged unpaid wages and meal and rest period premium wages
18 described above. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because
19 the wage statements issued to Settlement Class Members did not include all hours worked and the rate at
20 which they were being paid. In addition, Plaintiff alleges that Defendants' wage statements were also
21 deficient during the pay periods Defendants paid Plaintiff and other Settlement Class Members a non-
22 discretionary bonus based on the employee's sales for the month. Specifically, when Defendants paid
23 Plaintiff wages identified as "CO LOOKBACK" and/or "Smile Shop BON", Defendants failed to list the
24 pay rate and hours on Plaintiff's wage statements. Therefore, Plaintiff calculated Defendants' maximum
25 exposure for wage statement violations at approximately \$200,150 (($\50.00×23 current employees) +
26 ($\$100.00 \times 1,990$ subsequent wage statements)).

27 23. Defendants argue that meal and rest period claims cannot support a claim for wage
28 statement penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444 and
Kirby v. Immoos Fire Protection, Inc. (2012) 53 Cal.4th 1244. Defendants further argue that their alleged

1 wage statement violations could not be shown to be “knowing and intentional,” and that Plaintiff cannot
2 show that he or any other employee “suffer[ed] injury” as a result of the alleged wage statement violations,
3 as required by Lab. Code § 226(e) for imposition of penalties. As such, Plaintiff discounted the calculated
4 exposure by 10% for a risk of non-certification and an additional 10% for a risk of being unsuccessful on
5 the merits to arrive at an estimated total of \$162,121.50.

6 24. The Parties negotiated the settlement and release of a waiting time penalty claim, a cause
7 of action not asserted in the operative complaint. However, the Settlement includes a release and
8 settlement of a waiting time penalty cause of action as that was negotiated, debated, and discussed at
9 mediation. Specifically, Plaintiff’s claim that Defendants are also liable for waiting time penalties under
10 Labor Code section 203 as a result of their failure to pay all wages. Plaintiff alleges that upon his
11 separation of employment, Defendants paid Plaintiff’s wages on an ATM card without his voluntary
12 authorization (which is a form that was not negotiable and payable, on demand, without discount, at an
13 established business in the state of California). Based on the data provided by Defendants, there were
14 approximately 202 Settlement Class Members who have separated their employment with Defendants
15 during the relevant time period who could be entitled to waiting time penalties. Therefore, Plaintiff
16 calculated Defendants’ maximum exposure for waiting time penalties at approximately \$1,041,835 (202
former employees x \$21.49 [average regular rate] x 30 days x 8 hours/day).

17 25. Defendants assert they have strong defenses to the waiting time claim because there exist
18 good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Accordingly,
19 Plaintiff discounted the maximum exposure by 20% for the risk of non-certification, and an additional
20 15% to account for Defendants’ defenses on the merits to arrive at an estimated exposure of approximately
21 \$708,447.80.

22 26. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged
23 Labor Code violations. Plaintiff calculated Defendants’ maximum exposure at \$201,300.00 (2,013 pay
24 periods x \$100 initial violation rate).

25 27. Defendants argue that Plaintiff’s PAGA claim will fail for the same reasons that his
26 underlying claims will fail. Therefore, Plaintiff discounted the maximum exposure figure by 10% for a
27 risk of being unsuccessful on the merits, and an additional 10% to account for the possibility of this Court
28 reducing penalties, to arrive at an estimated exposure of \$163,053.00.

1 28. Using these estimated figures for each of the claims described above, Plaintiff predicted the
2 realistic total recovery for the Settlement Class would be approximately \$1,895,461. The proposed
3 settlement of \$650,000.00 therefore represents approximately 34% of the reasonably forecasted recovery
4 for the Settlement Class. Preliminary approval is appropriate as the settlement will provide tangible
5 monetary relief to Settlement Class members, and will still provide an average recovery to Settlement
6 Class members of over \$1,300.

7 29. Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA,
8 which is currently estimated to be \$216,666.66, and up to \$35,000.00 in verified costs reimbursement.
9 Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and
10 time-consuming litigation on a purely contingent fee basis. Further, Plaintiff has provided written
11 approval of the split of attorneys' fees in this action. Class Counsel has incurred substantial attorney fees
12 conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing
13 Defendants' documents and policies, analyzing Settlement Class members' timekeeping data and payroll
14 records, preparing for and attending mediation, negotiating and revising the long-form Settlement,
15 preparing this Motion, and otherwise litigating the case. Class Counsel expect to expend additional
16 attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding
17 questions from Settlement Class members, preparing the final approval papers and attending the Final
18 Approval hearing.

19 30. Plaintiff has provided written approval of the split of attorneys' fees in this action: 46.5%
20 to Haines Law Group, APC, 31% to Lidman Law, APC, and 22.5% to the Michael Burgis & Associates,
21 PC. Michael Burgis & Associates, PC is the referring attorney.

22 31. Plaintiff will seek a service award of \$5,000.00 at the time of seeking final approval, and
23 I believe this is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf of
24 the Settlement Class members, including the risk that he could be liable for Defendant's costs if this case
25 was unsuccessful, and because this amount is consideration for Plaintiff's general release and 1542
26 waiver against Defendants. Plaintiff was integral in the prosecution of this action, by, among other things,
27 providing substantial factual information and documents to Class Counsel, attending multiple meetings
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1 and conferences with Class Counsel to discuss the claims and theories at issue in the litigation, and
2 otherwise actively participating in the prosecution of their claims.

3 32. Although the parties engaged in informal discovery throughout this action, the parties still
4 had significant discovery to complete in formal litigation had the matter not settled. Moreover, Plaintiff
5 still had to file for class certification, and faced the prospect of appeals in the wake of a disputed class
6 certification ruling for Plaintiff and/or an adverse summary judgment ruling. Even if the classes sought
7 to be certified by Plaintiff were in fact certified, the parties would incur considerably more attorneys'
8 fees and costs through a possible decertification motion, trial, and possible appeal. This Settlement
9 avoids those risks and the accompanying expense.

10 33. I have directed my office to submit a copy of the instant Motion for Preliminary Approval
11 and all supporting documents via the LWDA's website on the same date concurrently herewith and will
12 have a supplemental proof of service filed after the Motion for Preliminary Approval and all supporting
13 documents are submitted to the LWDA.

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

16 Executed on March 2, 2021 at El Segundo, California.

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Elizabeth Nguyen

EXHIBIT 1

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Francisco Calderon (“Plaintiff”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendants *SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation* (collectively, “Defendants”), on the other hand. Plaintiff and Defendants are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines of Haines Law Group, APC and Scott M. Lidman, Elizabeth Nguyen, Milan Moore, and Romina Tamiry of Lidman Law, APC (collectively, “Class Counsel”). Defendants are represented by Johanna Fabrizio Parker, Krista Enns, and Joseph Blalock, of Benesch Friedlander, Coplan & Aronoff, LLP.

On January 30, 2020, Plaintiff filed a Complaint against Defendants in Los Angeles County Superior Court, in the matter entitled *Francisco Calderon v. SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation*, Case No. 20STCV03799 (the “Action”). In the operative Complaint, Plaintiff alleged that Defendants: (1) failed to pay all overtime wages owed; (2) failed to pay minimum wages owed; (3) failed to provide meal periods, or premium pay for non-compliant meal periods; (4) failed to authorize and permit rest periods, or premium pay for non-compliant rest periods; (5) failed to issue accurate, itemized wage statements; and (6) failed to pay all wages due upon separation of employment. As a result of the foregoing alleged violations, Plaintiff contends that Defendants are further liable to Plaintiff and the Settlement Class (defined below) because it engaged in unlawful business practices and for civil penalties under the Labor Code Private Attorneys General Act of 2004.

The matter was stayed due to Court Order, so that no responsive pleading was required or permitted. Defendants deny Plaintiff’s claims, and further deny the existence of a class. Separately, Defendant SmileDirectClub, LLC denies that it employs or employed Plaintiff or any Smile Guide in California.

Given the uncertainty of litigation, and to avoid costs of further litigation (both economic and opportunity), Plaintiff and Defendants wish to settle both individually and on behalf of the Settlement Class. This Settlement represents a compromise of materially disputed claims. Accordingly, Plaintiff and Defendants agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendants stipulate to the certification of the following Settlement Class:

All current and former non-exempt, hourly, employees of Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation who worked in California at any time from November 8, 2017 through the date of preliminary approval.

For purposes of this Settlement Agreement, the “Class Period” shall mean the time period of November 8, 2017 through the date of preliminary approval.

The Parties agree that certification for purposes of this Settlement Agreement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any

reason this Settlement Agreement is not approved or is terminated, in whole or in part, the Settlement Class, if conditionally certified for settlement purposes only will be decertified and this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

Defendants have agreed to the foregoing Settlement Class definition solely for the purposes of compromising and settling the Action, with no admission or waiver of their defense that SmileDirectClub LLC and Jeffrey Sulitzer, D.M.D. are not jointly liable to the Settlement Class. For purposes of the Settlement Class definition, the Parties acknowledge that Defendant SmileDirectClub LLC denies it employed any hourly individuals in California during the Class Period and/or is jointly liable to the Settlement Class. Further, the Parties understand and acknowledge that the joint employer issue is disputed and Defendants agree to this Settlement Class for purposes of this settlement only.

2. **PAGA Employees.** For the purposes of this Settlement Agreement only, Plaintiff and Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation stipulate to the following definition of PAGA Employees:

All current and former non-exempt, hourly, employees of Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation who worked in California at any time from January 30, 2019 through the date of preliminary approval.

For purposes of this Settlement Agreement, the “PAGA Period” and release under the PAGA shall mean the time period between January 30, 2019 through the date of preliminary approval.

3. **Amendment to Complaint.** In connection with the mediation, Defendants provided Plaintiff with time punch and pay data and other information relating to the members of the Settlement Class. That information was analyzed by Plaintiff, and the Parties negotiated this Settlement with the intention of resolving not only the claims asserted in the Complaint, but also claims based on Plaintiff’s allegations that Defendants violated Labor Code section 203 by paying Plaintiff and Settlement Class Members who were separated their final wages on an ATM card without their permission. In light of the Settlement and as a condition thereof, the Parties stipulate for purposes of effectuating the terms of the Settlement only, as part of this Settlement and subject to Court approval, the filing by Plaintiff of a Second Amended Complaint which adds this factual allegation upon which the claim under Labor Code section 203 is based, claims under the Private Attorneys’ General Act of 2004 (“PAGA”) based on these facts, and such claim will be resolved as part of and in conjunction with this Settlement. The Proposed Second Amended Complaint is attached to this Settlement as Exhibit A.

4. **Release by Settlement Class Members and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who timely and properly submit a Request for Exclusion as set forth below) (“Settlement Class Member” or “Class Members”) will fully and forever completely release and forever discharge Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation, and all of their past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants,

attorneys, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the “Released Parties”), as follows:

- A. Settlement Class Members’ Release: Settlement Class Members and Plaintiff will release and forever discharge all claims, demands, rights, liabilities and causes of action whether under state or federal law, that were pled in any of the Complaints in the Action, including the Proposed Second Amended Complaint pursuant to the terms of this Agreement, or which could have been pled in any of the Complaints in the Action based on the factual allegations therein, that arose during the Class Period with respect to the following claims: (a) failure to pay all overtime wages owed; (b) failure to pay minimum wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements; (f) failure to pay all wages due upon separation of employment; and (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above (collectively, “Released Claims”). Except as provided for under the Settlement Agreement, Class Members (who do not submit a timely Request for Exclusion) will not be eligible to receive or receive any additional wages or penalty payments based on the Released Claims from Defendants.
- B. The time period for the release of the Released Claims against the Released Parties shall be the same time period as the Class Period.
- C. PAGA Release: PAGA Employees, including Plaintiff, will release and forever discharge all claims, demands, rights, liabilities and causes of action under the California Labor Code Private Attorneys General Act of 2004 against the Released Parties based on (as alleged in the letters to the Labor & Workforce Development Agency (“LWDA”) January 30, 2020 and December 9, 2020): the (a) failure to pay all overtime wages owed; (b) failure to pay minimum wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements; and (f) failure to pay all wages due upon separation of employment that occurred during the PAGA Period (collectively, “PAGA Released Claim”). The PAGA Period and the time period of the PAGA Released Claims is defined as the time period January 30, 2019 through [the date the Court enters the order granting preliminary approval] (“PAGA Period”).
- D. Upon the Effective Date, all Class Members shall be deemed to have, and by operation of Judgment (defined below) shall have, released, waived and relinquished the Released Claims. The Settlement Class Members (who do not submit a timely Request for Exclusion) shall be enjoined from filing any actions, claims, complaints or proceedings against the Released Parties regarding the Released Claims.

- E. The Parties acknowledge that under the release, the right of the LWDA to investigate the released PAGA claims is not released, but Released Claims do include any claims for penalties by a Class Member as a result of any such LWDA investigation, and Class Members are waiving their right to act as a private attorney general as to the Released Claims.
- F. In light of the Class Representative Service Award, Plaintiff agrees to release, in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties through the date Plaintiff signs this Agreement. Notwithstanding the foregoing, Plaintiff understands that this release includes unknown claims, which includes waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiff agrees never to sue, join, or otherwise make a claim against any of the Released Parties as to any claim released by Plaintiff.

- G. Notwithstanding the above, nor anything else in this Settlement, Plaintiff's waiver and release in this Settlement does not apply to (i) those rights that as a matter of law cannot be waived, including, but not limited to, workers' compensation claims, pending or otherwise; (ii) rights or claims arising after this Agreement is executed by Plaintiff; (iii) rights or claims arising out of this Settlement. The Agreement in no way affects Plaintiff's entitlement and/or benefits to be received by Plaintiff in workers' compensation pursuant to the jurisdiction of workers' compensation.
 - H. The releases identified herein shall be null and void if the Settlement is not fully funded.
5. **Agreement May Be Pleaded As a Complete Defense.** This Settlement Agreement may be pleaded as a complete defense to any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of or contrary to this Settlement Agreement.
6. **Gross Settlement Amount.** As consideration, Defendants agree to pay a "Gross Settlement Amount" of Six Hundred Fifty Thousand Dollars and Zero Cents (\$650,000.00) in full and complete settlement of the Action, as follows:
- A. The Parties have agreed to engage Phoenix Settlement Administrators as the "Settlement Administrator" to administer this Settlement. All administrative costs shall be paid from the Gross Settlement Amount.

- B. The Gross Settlement Amount shall be deposited by Defendants into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class Members. Defendants agree to deposit the Gross Settlement Amount with the Settlement Administrator within thirty (30) calendar days after the “Effective Date” which is defined as the latter of: (a) the expiration of any appeal period following the Court’s final approval of the Settlement (at or following the Final Approval Hearing) and entry of a Final Judgment and Order Approving Settlement in the same or substantially the same form as Exhibit C (“Judgment”); or (b) the final resolution of any appeal that has been filed, with the California Court of Appeal or the California Supreme Court rendering a final judgment affirming the Court’s final approval of the Settlement without material modification.
- C. With the sole exception of paying the employer’s share of payroll taxes or any increase to the Gross Settlement Amount (as set forth in this Settlement Agreement), Defendants shall fully discharge their obligations to Plaintiff and Class Members through the remittance of the Gross Settlement Amount to the Settlement Administrator as set forth in paragraph 6(B), regardless of whether checks representing individual Settlement Awards are actually received and/or negotiated by Class Members.
- D. This is a non-reversionary settlement. The Gross Settlement Amount includes:
- (1) All payments (including interest) to the Settlement Class Members;
 - (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Seven Thousand Two Hundred Fifty Dollars and Zero Cents (\$7,250.00);
 - (3) Up to Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff’s Class Representative Service Award, in recognition of his contributions to the Action, and his service to the Settlement Class. Even in the event that the Court reduces or does not approve the requested Class Representative Service Award, Plaintiff shall not have the right to revoke this Settlement Agreement, and this Settlement shall remain binding;
 - (4) Up to one-third of the Gross Settlement Amount in Class Counsel’s attorneys’ fees (including up to one-third of any increase in the Gross Settlement Amount pursuant to Paragraph 13), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys’ fees or costs, Class Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding; and

- (5) Thirty Thousand Dollars and Zero Cents (\$30,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Twenty-Two Thousand, Five Hundred Dollars and Zero Cents (\$22,500.00) will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining twenty-five percent (25%), or Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), will be payable to certain Settlement Class Members as the “PAGA Amount,” as described below.

- E. Defendants’ share of payroll taxes shall be paid by Defendants separately from, and in addition to, the Gross Settlement Amount. Unless otherwise provided for in this Agreement, this is the sole exception of a required payment by either Defendant in addition to the Gross Settlement Amount.

7. **Payments to the Settlement Class.** Settlement Class Members are not required to submit a claim form to receive a payment (“Settlement Award”) from the Settlement. Settlement Awards will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, Plaintiff’s Class Representative Service Award, the Settlement Administrator’s fees and expenses for administration, and the amount designated as PAGA civil penalties payable to the LWDA. The remaining amount shall be known as the “Net Settlement Amount.”
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member’s Settlement Award based on the following formula:
- i. Workweek Based Amount: Ninety-Five Percent (95%) of the Net Settlement Amount, not including the PAGA Amount payable to Settlement Class Members as described above, shall be allocated to Settlement Class Members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked during the Class Period, the numerator of which is the Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all Settlement Class Members who worked during the Class Period.
 - ii. Waiting Time Penalty Amount: Five Percent (5%) of the Net Settlement Amount, not including the PAGA Amount payable to Settlement Class Members as described above, shall be designated as the “Waiting Time Penalty Amount.” Each participating Settlement Class member who was separated from employment with Defendants at any time during the Class Period shall receive a portion of the Waiting Time Penalty Amount. The Waiting Time Penalty amount shall be divided equally between all

Settlement Class Members who were separated from their employment during the Class Period.

- iii. PAGA Amount: In addition, Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) of the Gross Settlement Amount has been designated as the “PAGA Amount” as described above. Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the PAGA Period, which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee’s number of workweeks worked during this time period, and the denominator of which is the total number of workweeks worked by all PAGA Employees.
- C. Within ten (10) calendar days following Defendants’ deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class Members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendants’ counsel.
 - D. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Sixty-Seven percent (67%) as penalties and interest; and Thirty-Three percent (33%) as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest. No tax advice has been given to any Settlement Class member. No tax result is guaranteed as related to any payment under this Settlement. Defendants make no representation as to the tax treatment or legal effect of the payments called for under this Settlement Agreement. Each Settlement Class member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan.
 - E. Each member of the Settlement Class who receives a Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class Members whose checks were not cashed within 180 days after mailing will escheat to the California Secretary of State- Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class Member.

- F. Neither Plaintiff nor Defendants shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

8. **Attorneys' Fees and Costs.** Defendants will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Gross Settlement Amount (including one-third of any increase of the Gross Settlement Amount pursuant to Paragraph 13), and which is currently estimated to be Two Hundred, Sixteen Thousand, Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$216,666.66). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Thirty-Five Thousand Dollars and Zero Cents (35,000.00) from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court. Class Counsel is responsible for any and all taxes associated with any payments to Class Counsel under this Settlement Agreement.

9. **Class Representative Service Award.** Defendants will not object to a request for a Class Representative Service Award of up to Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff for his time and risk in prosecuting this case, and his service to the Settlement Class. This award will be in addition to Plaintiff's Settlement Award as a Settlement Class member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator. Even in the event that the Court reduces or does not approve the requested Service Award, Plaintiff shall not have the right to revoke this Settlement, and it will remain binding. Plaintiff is responsible for any and all taxes associated with this Service Award.

10. **Settlement Administrator.** Defendants will not object the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendants will not object to Plaintiff's seeking permission to pay up to Seven Thousand, Two Hundred Fifty Dollars and Zero Cents (\$7,250.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Defendants' share of taxes payable on the wages, which shall be paid by Defendants separate and apart from the Gross Settlement Amount, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Awards have been mailed to all participating Settlement Class Members. The Settlement Administrator shall keep counsel for Defendants and Class Counsel apprised of the status of its distribution of Settlement Awards. Upon completion of administration of the Settlement, the Settlement Administrator shall provide a detailed, written certification of such completion to the Court and counsel for the Parties.

11. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines of Haines Law Group, APC and Scott M. Lidman, Milan Moore, Elizabeth Nguyen, and Romina Tamiry of Lidman Law, APC as Class Counsel;
- C. Appointing Francisco Calderon as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Permitting the filing of the Proposed Second Amended Complaint attached to this Settlement as Exhibit A;
- F. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- G. Approving the form and content of the Notice Packet (which is comprised of the Notice of Pendency of Class Action and Settlement and Notice of Individual Settlement Award, drafts of which are attached collectively hereto as Exhibit B), and directing the mailing of same;
- H. Staying all other proceedings in the Action until Final Approval; and
- I. Scheduling a Final Approval hearing.

The Preliminary Approval Order shall be substantially the same as the proposed order attached as Exhibit D. Class Counsel must draft the preliminary approval papers and give Defendants' counsel a draft of the papers to review at least five (5) calendar days before the filing deadline. Defendants shall be permitted, but not required, to file their own brief or statement in support of Preliminary Approval. Defendants agree not to file an opposition to the Motion for Preliminary Approval or Motion for Final Approval.

12. Notice to Settlement Class. Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within twenty (20) calendar days after entry of an order preliminarily approving this Agreement, Defendants will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, positions held, the dates of employment and the number of workweeks worked by each Settlement Class member while employed during the Class Period (the "Class Data"). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class Members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class Members; (ii) update the address of any Settlement

Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet in English to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.

- C. Notice Packets shall be mailed to all Settlement Class Members in the form of Exhibit B that is approved by the Court within (10) business days from receipt of the Class Data. Plaintiff and Class Counsel will not distribute any other documents or notices (whether by mail, on-line, or otherwise) regarding this Action or Settlement.
- D. Requests for Exclusion. Any Settlement Class Member other than Plaintiff who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline"). By signing this Settlement Agreement, Plaintiff agrees to be bound by its terms, and further agrees not to request exclusion or object to any terms of the Settlement.
- i. The Notice Packet shall state that Settlement Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Class Member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.
 - ii. The Settlement Administrator shall provide Class Counsel and Defendants' counsel with weekly reports as to any Requests for Exclusion.
- E. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by sending the written objection to the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendants' counsel). Defendants' counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any written objection should: (1)

contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class Member for purposes of the objection; (2) reasons for all objections; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence, if any; and (4) be postmarked no later than the Response Deadline. Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing irrespective of whether they submitted any written objections. Members of the Settlement Class who do not submit an objection or appear at the Final Approval Hearing and voice an objection shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. The Settlement Administrator shall provide Class Counsel and Defendants' counsel with weekly reports as to any written objections.

- F. Notice of Individual Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class Member's estimated Settlement Award as well as all of the information that was used from Defendants' records in order to calculate the Settlement Award, including the Settlement Class member's number of workweeks worked during the Class Period, and the number of workweeks worked during the time period of January 30, 2019 through the date of preliminary approval. Settlement Class Members will have the opportunity, should they disagree with Defendants' records regarding the information stated in the Notice of Individual Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Award shall be binding upon the Settlement Class member and the Parties. In addition, the Notice Packets will include the url address to the website maintained by the Settlement Administrator in order to provide notice to the Settlement Class of the date, time, location of the Final Approval Hearing, opt-out deadline, or any changes thereto. The Settlement Administrator shall provide and maintain a website (that is unreachable without typing in the exact url address) that will provide sufficient information to notify Settlement Class Members of the name of the case, case number, Final Approval Hearing date, time, location and opt-out deadline, and any changes thereto.
- G. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within three (3) business days of receiving the returned Notice Packet. If an updated mailing address is identified before the Response Deadline, the Settlement Administrator shall resend the Notice Packet to the

Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. It will be presumed that, if an envelope so mailed has not been returned within twenty (20) days of the mailing, the Settlement Class member received the Notice Packet. Settlement Class Members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendants' Counsel to provide notice of the proposed settlement.

13. **Escalator Clause.** Defendants represent that there are an estimated 11,463 workweeks worked by the Settlement Class Members during the Class Period. If the number of workweeks during the Class Period is more than 10% greater than this figure, (i.e., if there are 12,609 or more workweeks worked by the Settlement Class Members), Defendants agree to increase the Gross Settlement Amount on a proportional basis (i.e., if there was 10% increase in the number workweeks during the Class Period, Defendants would agree to increase the Gross Settlement Amount by 10%). However, instead of increasing the Gross Settlement Amount if this escalator clause is triggered, Defendants retain the option to end the Class Period and release period as of the date that the increase in workweeks reaches 12,609 without any increase in the Gross Settlement Amount.

14. **Confirmation.** Defendants verify that prior to November 8, 2017, they did not employ any hourly, non-exempt employees in California.

15. **Revocation Option for Defendants.** If more than ten percent (10%) of the Class Members opt out of the Settlement, Defendants may, at their election, rescind the Settlement and all actions taken in furtherance of it will thereby be null and void. Defendants must exercise this right of rescission, in writing, to Class Counsel within fifteen (15) calendar days after the Settlement Administrator notifies the Parties of a greater than ten (10%) opt-out rate. If the option to rescind is exercised, then Defendants shall be solely responsible for all costs of the settlement administration accrued to that point.

16. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Service Award, and settlement administration costs; and

- C. Entering Judgment pursuant to California Rule of Court 3.769 (Exhibit C). Notice of the Judgment to Class Members will be provided in writing by mail with the Settlement Award.

17. **Non-Admission of Liability.** Defendants contend that all of their employment practices have complied with applicable law, that Class Members were and are properly compensated for all wages, including (without limitation) overtime, and were and are provided all meal and rest breaks, in compliance with applicable law; and that their conduct was not willful or otherwise unlawful with respect to the payment of wages to Class Members. Defendants have denied and continue to deny each of the claims and contentions alleged by Plaintiff in the Action. Defendants deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action and believes they have valid defenses to Plaintiff's claims. This Agreement reflects the compromise and settlement of disputed claims between the Parties, and its provisions and any and all drafts, communications or discussions relating thereto do not constitute, are not intended to constitute, and will not under any circumstances be deemed to constitute an admission by either Party as to the merits, validity or accuracy of any of the allegations or claims in the Action, nor a waiver of any defense. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Defendants and/or the Released Parties, and it shall not be construed as or deemed to be evidence of, or an admission or concession that the any Settling Class member has suffered any damage. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

18. **Non-disclosure and Non-publication.** Plaintiff and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class Members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel.

19. **Documents.** Plaintiff and Class Counsel agree that none of the documents or information provided to them by Defendants shall be used for any purpose other than prosecution of this Action. To the extent that Plaintiff or Class Counsel has received confidential documents or information from Defendants associated with this Action, each agrees to destroy these documents within sixty (60) days following the Effective Date, although Class Counsel may retain one copy for its files in a secure location.

20. **Legal Developments.** The Parties agree that Plaintiff will submit to the Court a motion for preliminary approval of this Settlement containing all of the terms and conditions contained herein notwithstanding any new legal developments regarding the Released Claims.

21. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

22. **No Construction Against Drafter.** This Settlement Agreement shall be deemed to have been drafted jointly by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement. The Parties agree that any earlier drafts of this Agreement and/or related documents cannot be used as alleged evidence of intent of any Party.

23. **Attorneys' Fees.** In the event of any dispute arising out of the interpretation, performance, or breach of any provision of this Settlement Agreement, the prevailing party in such dispute(s) shall be entitled to recover her and/or its reasonable attorneys' fees and costs incurred arising from such dispute.

24. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendants: Johanna Fabrizio Parker, Krista Enns, and Joseph Blalock, Friedlander, Coplan & Aronoff, LLP, 200 Public Square Suite 2300, Cleveland, Ohio 44114; One Montgomery Tower, 120 Kearny Street, Suite 2700, San Francisco, CA 94104; 41 South High Street, Suite 2600, Columbus, OH 43215 JParker@beneschlaw.com, KEns@beneschlaw.com, and JBlalock@beneschlaw.com.

if to Plaintiff: Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC, 2155 Campus Drive, Suite 150 El Segundo, California 90245; slidman@lidmanlaw.com and enguyen@lidmanlaw.com

Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245; phaines@haineslawgroup.com

25. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

26. **Entire Agreement.** This Settlement Agreement including the Exhibits, which are incorporated into and made a part of this Settlement Agreement, contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof, including (without limitation) the Parties'

Memorandum of Understanding memorializing the Settlement terms. This Settlement Agreement is executed without reliance upon any promise, representation or warranty by any Party or any representative of a Party, other than those expressly set forth in this Agreement.

27. **Agreement Binding on Successors in Interest.** This Settlement Agreement shall be binding and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the Parties.

28. **Jurisdiction of the Court.** Any dispute regarding the interpretation or validity of or otherwise arising out of this Settlement Agreement, or relating to the Action or the Released Claims, shall be subject to the exclusive jurisdiction of the Court, and Plaintiff, Class Members and Defendants agree to submit to the personal and exclusive jurisdiction of the Court for the purpose of resolving any such dispute. Following the Effective Date, the Court shall retain jurisdiction solely with respect to the interpretation, implementation and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this Settlement Agreement and all orders and judgments entered in connection therewith.

29. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Signatures by facsimile or in Portable Document Format (PDF) shall have the same force and effect as original signatures.

DATED: February 22, 2021

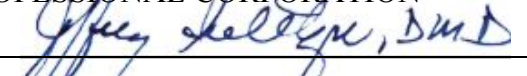
DEFENDANT SMILEDIRECTCLUB, LLC

By: 

Its: Chief Legal Officer, EVP Business Affairs

DATED: February 22, 2021

DEFENDANT JEFFREY SULITZER, D.M.D.,
PROFESSIONAL CORPORATION

By: 

Its: Owner

DATED: Feb 26, 2021

PLAINTIFF FRANCISCO CALDERON

By: 
Francisco J Calderon (Feb 26, 2021 13:07 PST)

Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: February 22, 2021

BENESCH, FRIEDLANDER,
COPLAN & ARONOFF, LLP

By: _____
Johanna Fabrizio Parker
Krista Enns
Attorneys for Defendants SmileDirectClub,
LLC and Jeffrey Sulitzer, D.M.D., Professional
Corporation

DATED: February 26, 2021

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff Francisco Calderon

DATED: February 26, 2021

LIDMAN LAW, APC

By: _____
Scott M. Lidman
Attorneys for Plaintiff Francisco Calderon

EXHIBIT A

LIDMAN LAW, APC

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Fax: (424) 292-2355

Attorneys for Plaintiff
FRANCISCO CALDERON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FRANCISCO CALDERON, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

SMILEDIRECTCLUB, LLC, a Tennessee
limited liability company; JEFFREY
SULITZER, D.M.D., PROFESSIONAL
CORPORATION, a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: 20STCV03799

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) FAILURE TO PAY ALL OVERTIME
WAGES OWED (LABOR CODE §§
204, 510, 558, 1194, 1198);**
- (2) FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1194, 1194.2, 1197);**
- (3) FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512);**
- (4) FAILURE TO AUTHORIZE AND
PERMIT ALL REST PERIODS
(LABOR CODE §§ 226.7, 516);**
- (5) FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE**

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(7) UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*);

DEMAND FOR JURY TRIAL UNLIMITED CIVIL CASE

[Complaint Filed: February 20, 2020]

1 Plaintiff Francisco Calderon ("Plaintiff"), on behalf of himself and all others similarly situated,
2 hereby brings this Second Amended Class and Representative Action Complaint ("SAC") against
3 Smiledirectclub, LLC, a Tennessee limited liability company, Jeffrey Sulitzer, D.M.D., Professional
4 Corporation, a California Corporation, and DOES 1 to 100, inclusive (collectively "Defendants"), and on
5 information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this SAC for
8 recovery of unpaid wages and penalties under California Business & Professions Code § 17200 *et seq.*,
9 Labor Code §§ 201-203, 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2698 *et*
10 *seq.*, and Industrial Welfare Commission Wage Order 4 ("Wage Order 4"), in addition to seeking
11 declaratory relief and restitution. This SAC is brought pursuant to California Code of Civil Procedure §
12 382. This Court has jurisdiction over Defendants' violations of the California Labor Code because the
13 amount in controversy exceeds this Court's jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§ 395(a) and
16 395.5, as at least some of the acts and omissions complained of herein occurred in the County of Los
17 Angeles. Defendants own, maintain offices, transact business, have agent(s) within the County of Los
18 Angeles, and/or otherwise are found within the County of Los Angeles, and Defendants are within the
19 jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding the
23 filing of the lawsuit in this action and within the statute of limitations periods applicable to each cause of
24 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and
25 is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or property,
26 and has been deprived of the rights guaranteed by Labor Code §§ 201-203, 204, 226 *et seq.*, 226.7, 510,
27 512, 516, 558, 1194, 1194.2, 1197, 1198, 2698 *et seq.*; California Business & Professions Code § 17200
28 *et seq.* ("Unfair Competition Law"); and Wage Order 4, which sets employment standards for the

1 professional, technical, clerical, mechanical and similar occupations, which includes the industry in
2 which Plaintiff worked for Defendants.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four years
4 preceding the filing of the lawsuit and continuing to the present, Defendants did (and continue to do)
5 business by being the first digital brand for straightening teeth. According to their website, Defendants
6 represent 95% of the doctor-directed at-home clear aligner industry. Defendants employed Plaintiff and
7 other, similarly-situated hourly, non-exempt employees within, among other counties, Los Angeles
8 County and the state of California and, therefore, were (and are) doing business in Los Angeles County
9 and the State of California.

10 5. Plaintiff does not know the true names or capacities, whether individual, partner, or
11 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants
12 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this SAC
13 when such true names and capacities are discovered. Plaintiff is informed, and believes, and based
14 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
15 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff
16 and the Classes (as defined in Paragraph 18) to be subject to the unlawful employment practices, wrongs,
17 injuries and damages complained of herein.

18 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein,
19 Defendants were and are the employers of Plaintiff and all members of the Classes.

20 7. At all times herein mentioned, each of said Defendants participated in the doing of the
21 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
22 and each of them, were the agents, servants, and employees of each and every one of the other
23 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within
24 the course and scope of said agency and employment. Defendants, and each of them, approved of,
25 condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

26 8. At all times mentioned herein, Defendants, and each of them, were members of and
27 engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope
28 of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges

1 that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

2 **GENERAL FACTUAL ALLEGATIONS**

3 9. Defendants maintain, and maintained throughout the time period relevant to this action,
4 various locations known as SmileShops throughout California, including inside the CVS Pharmacy in
5 Woodlands, California, where Plaintiff worked. Plaintiff worked for Defendants as an hourly, non-
6 exempt employee approximately March 2019 through approximately January 2, 2020. During his
7 employment, Plaintiff worked as a Smile Guide and performed various duties throughout his
8 employment, including without limitation, explaining the products and guiding customers through
9 timelines and payment plans.

10 10. During his employment with Defendants, Plaintiff was typically scheduled to begin his
11 shift at 11:30 a.m. and would clock-in using Defendants' UltiPro timekeeping system that automatically
12 populated his clock-in time.

13 11. Throughout Plaintiff's employment with Defendants, Defendants would keep track of
14 Plaintiff's time worked and would unlawfully shave Plaintiff's work time and/or round Plaintiff's work
15 time such that Plaintiff would not be fully paid for all time worked. This time shaving/rounding practice
16 utilized by Defendants was not-even handed over time and would round and shave in Defendants' favor
17 such that Plaintiff was routinely underpaid for his time worked. Further, during Plaintiff's employment
18 with Defendants, because he would on occasion work in excess of 8 hours per workday and/or 40 hours
19 per work week, had Plaintiff been properly paid for all of the time that he actually worked, he would have
20 been paid additional overtime wages. This practice by Defendants resulted in Defendants not properly
21 tracking the time worked by Plaintiff, and also resulted in Defendants paying Plaintiff less than he was
22 owed for the work he performed, including failing to pay him all required minimum wages and overtime
23 wages.

24 12. Throughout Plaintiff's employment with Defendants, Plaintiff was not provided all
25 required meal periods due to Defendants' meal period policies/practices which fail to provide
26 uninterrupted, duty-free and timely 30-minute meal periods when employees work in excess of 5.0 hours
27 in a day. Specifically, due to his job duties, Plaintiff was often prevented from taking meal periods that
28 commenced before the end of the fifth hour of work and/or a meal period altogether. This policy and

1 practice of Defendants of failing to provide lawful and timely meal periods to Plaintiff violates California
2 law.

3 13. Although Plaintiff was not provided with all legally-compliant meal periods to which he
4 was entitled, Defendants failed to compensate Plaintiff with the required meal period premium for each
5 workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon
6 information and belief during at least a portion of the class period, Defendants maintained no payroll
7 code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7
8 in the event that a legally compliant meal period was not provided to Plaintiff and their non-exempt
9 employees.

10 14. Plaintiff was also not authorized and permitted to take all required rest periods due to
11 Defendants' rest period policies/practices. Defendants' rest period policies/practices fail to authorize and
12 permit all rest periods for every four hours worked, or *major fraction thereof*. Specifically, during the
13 shifts when Plaintiff worked alone, Defendants' policy and practice prohibited him from taking any rest
14 periods.

15 15. On those occasions when Plaintiff was not authorized and permitted to take all legally
16 required rest periods to which he was entitled, Defendants failed to compensate Plaintiff with the required
17 rest period premium for each workday in which he experienced a rest period violation as mandated by
18 Labor Code § 226.7. Further, upon information and belief during at least a portion of the class period,
19 Defendants maintained no payroll code or other mechanism for the payment of rest period premium
20 payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to
21 their non-exempt employees.

22 16. Upon Plaintiff's separation of employment from Defendants, Defendants paid Plaintiff's
23 wages on an ATM card without his voluntary authorization (which is a form that was not negotiable and
24 payable, on demand, without discount, at an established business in the state of California). As a result,
25 Defendants failed to timely pay Plaintiff all of his final wages due at the time of separation.

26 17. As a result of Defendants' failure to pay all overtime and minimum wages owed, and
27 failure to pay all meal and rest period premium wages, Defendants failed to provide Plaintiff with
28 accurate, itemized wage statements. Additionally, Defendants' wage statements were also deficient in

the pay periods Defendants paid Plaintiff a non-discretionary bonus based on his sales for the month. Specifically, when Defendants paid Plaintiff wages identified as “CO LOOKBACK”, Defendants failed to list the pay rate and hours on his wage statements.

18. As a further result of Defendants’ failure to pay all overtime and minimum wages owed, and failure to pay all meal and rest period premium wages, and by paying Plaintiff’s final wages due on an ATM card without his voluntary authorization, which is a form that was not negotiable and payable, on demand, without discount, at an established business in the state of California, Defendants failed to pay Plaintiff all of his wages owed upon his separation of employment with Defendants.

CLASS ACTION ALLEGATIONS

19. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Overtime Class consists of all of Defendants’ current and former non-exempt employees in California who: worked in excess of 8 hours in a work day and/or in excess of 40 hours in a work week, and were subject to Defendants’ timekeeping system, during the four years preceding the filing of the lawsuit through the present.
- b. The Minimum Wage Class consists of all of Defendants’ current and former non-exempt employees in California who were subject to Defendants’ timekeeping system, during the four years preceding the filing of the lawsuit through the present.
- c. The Meal Period Class consists of all of Defendants’ current and former non-exempt employees in California who: worked at least one shift in excess of 5.0 hours during the four years immediately preceding the filing of the lawsuit through the present.
- d. The Rest Period Class consists of all of Defendants’ current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more during the four years immediately preceding the filing of the lawsuit through the present.
- e. The Wage Statement Class consists of members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; (iv) Rest Period Class; and/or (v) any non-exempt employee who received a wage statement with a “CO LOOKBACK” that did not have the

hourly rate or hours listed, during the one year immediately preceding the filing of the lawsuit through the present.

f. The Waiting Time Penalty Class consists of Defendants' formerly employed members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; and/or (iv) Rest Period Class, during the three years immediately preceding the filing of the lawsuit through the present.

g. The UCL Class consists of members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; (iv) Rest Period Class; (v) Wage Statement Class; and/or (vi) Waiting Time Penalty Class, during the four years immediately preceding the filing of the lawsuit through the present.

20. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

22. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

i. Whether Defendants properly paid all minimum wages and/or overtime wages at the regular rate to members of the Minimum Wage Class and Overtime Class pursuant to Labor Code §§ 204, 221, 510, 558, 1192, 1194, 1194.2, 1197, 1197.1 and 1198;

ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

iii. Whether Defendants authorized and permitted all legally compliant rest periods to

members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

iv. Whether Defendants provided accurate, itemized wage statements to members of the Classes;

v. Whether Defendants' policies and/or practices for the timing, amount, and/or form of payment of final wages to members of the Waiting Time Class at the time of their separation of employment were lawful; and

vi. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

23. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform minimum wage, overtime wage payment, and meal and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

24. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the lawsuit. As alleged herein, Plaintiff, like the members of the Classes, was not provided all legally required minimum wages, and overtime wages, was not provided with all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when he was not provided compliant meal and rest periods, was not provided with accurate, itemized wage statements, was not paid all wages upon termination of his employment, and was paid final wages on an ATM card without his voluntary authorization, which is a form that was not negotiable and payable, on demand, without discount, at an established business in the state of California.

25. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's

1 attorneys are ready, willing and able to fully and adequately represent the members of the Classes and
2 Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in
3 state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of
4 the members of the Classes.

5 26. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
6 important public interest in establishing minimum working conditions and standards in California. These
7 laws and labor standards protect the average working employee from exploitation by employers who
8 have the responsibility to follow the laws and who may seek to take advantage of superior economic and
9 bargaining power in setting onerous terms and conditions of employment. The nature of this action and
10 the format of laws available to Plaintiff and members of the Classes make the class action format a
11 particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee
12 were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable
13 advantage since they would be able to exploit and overwhelm the limited resources of each individual
14 plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the
15 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
16 employees who would be disinclined to file an action against their former and/or current employer for
17 real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment.
18 Further, the prosecution of separate actions by the individual class members, even if possible, would
19 create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual
20 class members against Defendants herein; and which would establish potentially incompatible standards
21 of conduct for Defendants; and/or legal determinations with respect to individual class members which
22 would, as a practical matter, be dispositive of the interest of the other class members not parties to
23 adjudications or which would substantially impair or impede the ability of the class members to protect
24 their interests. Further, the claims of the individual members of the Classes are not sufficiently large to
25 warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending
26 thereto. As such, the Classes identified in Paragraph 18 are maintainable as a Class under § 382 of the
27 Code of Civil Procedure.

28 //

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **(AGAINST ALL DEFENDANTS)**

4 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 28. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198
6 which provide that all non-exempt employees are entitled to all overtime wages for all overtime worked
7 (hours in excess of 8 in one day and/or 40 in one week), and provide a private right of action for the
8 failure to pay all overtime compensation for overtime work performed.

9 29. At all times relevant herein, Defendants were required to properly compensate Plaintiff
10 and the members of the Overtime Class for all overtime hours worked pursuant to California Labor Code
11 §§ 510 and 1194, and Wage Order 4. Labor Code § 510 and Wage Order 4, Section 3 require an employer
12 to pay an employee “one and one-half (1½) times the regular rate of pay” for work in excess of 8 hours
13 per workday and/or in excess of 40 hours per workweek. Labor Code § 510. Defendants caused Plaintiff
14 and the members of the Overtime Class to work in excess of 8 hours in a workday and/or 40 hours in a
15 workweek but did not properly compensate Plaintiff and the members of the Overtime Class at one and
16 one-half their regular rate of pay for such hours.

17 30. The foregoing practices and policies are unlawful and create entitlement to recovery by
18 Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime
19 premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys’
20 fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 510, 558, 1194 and 1198, Wage
21 Order 4, California Code of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and
22 Civil Code §§ 3287(b) and 3289.

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY ALL MINIMUM WAGES OWED**

25 **(AGAINST ALL DEFENDANTS)**

26 31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 32. This cause of action is brought pursuant to Labor Code §§ 204, 558, 1194 and 1198 which
28 provide that all non-exempt employees are entitled to all minimum wages for all hours worked, and

1 provide a private right of action for the failure to pay all minimum wage compensation for all work
2 performed.

3 33. At all times relevant herein, Defendants were required to properly compensate Plaintiff
4 and the members of the Minimum Wage Class for all hours worked pursuant to California Labor Code
5 §§ 1194, 1197 and 1198, and Wage Order 4. Wage Order 4, Section 4 requires an employer to pay to
6 every employee on the established payday for the period involved not less than the applicable minimum
7 wage for all hours worked in the payroll period. Defendants caused Plaintiff and the members of the
8 Minimum Wage Class to work hours in a workweek but did not properly compensate Plaintiff and the
9 members of the Minimum Wage Class at least minimum wages for such hours.

10 34. At all times relevant herein, Defendants lacked good faith and had no reasonable grounds
11 for believing that their practices in failing to pay all minimum wages owed at the applicable rate was not
12 a violation of any provision of the Labor Code relating to minimum wage, or an order of the Industrial
13 Welfare Commission. Defendants therefore, in addition to owing minimum wages to Plaintiff and the
14 members of the Minimum Wage Class, also owe liquidated damages in an amount equal to the wages
15 unlawfully unpaid, and interest thereon, pursuant to Labor Code § 1194.2.

16 35. The foregoing practices and policies are unlawful and create entitlement to recovery by
17 Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of
18 minimum wages owing, including interest thereon, as well as statutory penalties, liquidated damages,
19 civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 558,
20 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 4, California Code of Civil Procedure § 1021.5
21 California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MEAL PERIODS**

24 **(AGAINST ALL DEFENDANTS)**

25 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
27 their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff
28 and members of the Meal Period Class, with all legally compliant meal periods in accordance with the

mandates of the California Labor Code and Wage Order 4, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7, and 512.

38. As a result, Defendants are responsible for paying premium compensation for meal period violations including interest thereon, as well as statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 4, California Code of Civil Procedure § 1021.5 and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT ALL REST PERIODS

(AGAINST ALL DEFENDANTS)

39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

40. Wage Order 4, § 12 and California Labor Code §§ 226.7 and 516 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or *major fraction thereof*.

41. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required rest periods.

42. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, Wage Order 4, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff and the Wage

Statement Class Members with accurate, itemized wage statements that included among other requirements, all applicable rates of pay, hours, accurate total gross wages earned, meal and rest period premiums, and total net wages earned in violation of Labor Code § 226 *et seq.*

45. Defendants' failure to furnish Plaintiff and the members of the Wage Statement Class with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all of minimum and overtime wages earned and non-payment of their meal and rest period premiums, and deprived them of the information necessary to identify discrepancies in Defendants' reported data.

46. Defendants' failures created an entitlement to Plaintiff and members of the Wage Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226, including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit pursuant to Labor Code § 226 *et seq.*

SIXTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES UPON TERMINATION

(AGAINST ALL DEFENDANTS)

47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

48. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

49. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Penalty Class all final wages due to them at their separation from employment, including, unpaid minimum wages, overtime wages, and meal and rest period premium wages.

50. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Penalty Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.

1 51. Defendants' failure to pay all final wages was willful within the meaning of Labor Code
2 § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Penalty
3 Class their earned wages upon separation from employment results in a continued payment of wages up
4 to thirty days from the time the wages were due. In addition, Defendants willfully violated Labor Code
5 section 203 by paying Plaintiff and the members of the Waiting Time Penalty Class their final wages on
6 an ATM card without their voluntary authorization, which is a form that was not negotiable and payable,
7 on demand, without discount, at an established business in the state of California.

8 52. Therefore, Plaintiff and members of the Waiting Time Penalty Class are entitled to
9 compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

10 **SEVENTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 **(AGAINST ALL DEFENDANTS)**

13 53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 54. Defendants have engaged and continue to engage in unfair and/or unlawful business
15 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing
16 to pay all overtime and/or minimum wages owed, failing to provide all required meal periods and failing
17 to authorize and permit all required rest periods, and failing to pay meal and rest period premium wage
18 payments.

19 55. Defendants' utilization of these unfair and/or unlawful business practices deprived
20 Plaintiff and continues to deprive members of the Classes of compensation to which they are legally
21 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over
22 Defendants' competitors who have been and/or are currently employing workers and attempting to do so
23 in honest compliance with applicable wage and hour laws.

24 56. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein,
25 Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of monies, as
26 necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by
27 Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

28 57. The acts complained of herein occurred within the last four years immediately preceding

1 the filing of the lawsuit in this action.

2 58. Plaintiff was compelled to retain the services of counsel to file this court action to protect
3 his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants'
4 current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has
5 thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under
6 Code of Civil Procedure § 1021.5.

7 **EIGHTH CAUSE OF ACTION**

8 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

9 **(AGAINST ALL DEFENDANTS)**

10 59. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

11 60. Defendants have committed several Labor Code violations against Plaintiff and other
12 aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et*
13 *seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against
14 Defendants to recover the civil penalties due to Plaintiff, the other aggrieved employees, and the State of
15 California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not
16 limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for
17 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure
18 to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation
19 and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period;
20 (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code §
21 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each
22 subsequent violation per employee per pay period for those violations of the Labor Code for which no
23 civil penalty is specifically provided, based on the following Labor Code violations:

24 a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay
25 Plaintiff and other aggrieved employees all overtime compensation earned;

26 b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiff
27 and other aggrieved employees the statutory minimum wage for all hours worked;
28

- 1 c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally
2 required meal periods and failing to pay meal period premiums to Plaintiff and other
3 aggrieved employees;
- 4 d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally
5 required rest periods and failing to pay rest period premiums to Plaintiff and other
6 aggrieved employees;
- 7 e) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved
8 employees with accurate and compliant itemized wage statements;
- 9 f) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final
10 wages due to Plaintiff and other aggrieved employees.
- 11 g) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final
12 wages due to Plaintiff and other aggrieved employees in a form that was negotiable and
13 payable, on demand, without discount, at an established business in the state of
14 California, by paying the final wages due to Plaintiff and other aggrieved employees on
15 an ATM card without their voluntary authorization, which is a form that was not
16 negotiable and payable, on demand, without discount, at an established business in the
17 state of California;
- 18 h) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf
19 of Plaintiff and other aggrieved employees; and
- 20 i) Defendants violated Labor Code § 204 by failing to pay Plaintiff and other aggrieved
21 employees all earned wages at least twice during each calendar month.

22 61. On January 30, 2020, Plaintiff notified Defendants via certified mail, and the California
23 Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’ violations of the
24 California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor
25 Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 60
26 (a)-(f) and (h)-(i). On December 9, 2020, Plaintiff sent a supplemental notice to the LWDA of the intent
27 to bring a claim for civil penalties with respect to violations of the California Labor Code identified in
28 Paragraph 60 (f). Now that sixty-five days have passed from Plaintiff notifying Defendants of these

violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Labor Code Private Attorneys General Act with respect to these violations.

62. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198.
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1197, 1197.1 and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for penalties pursuant to Labor § 226;
9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 203;
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a)

and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations cited in Paragraph 60 (a)-(h) above;

12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

14. For such other and further relief the Court may deem just and proper.

Dated: _____ Respectfully submitted,
LIDMAN LAW, APC

By: _____
Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Attorneys for Plaintiff
FRANCISCO CALDERON

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: _____ Respectfully submitted,
LIDMAN LAW, APC

By: _____
Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Attorneys for Plaintiff
FRANCISCO CALDERON

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

FRANCISCO CALDERON,

Plaintiff,

vs.

SMILEDIRECTCLUB, LLC, AND JEFFREY
SULITZER, D.M.D., PROFESSIONAL
CORPORATION., a California corporation; and Does
1 through 100,

Defendants.

Case No. 20STCV03799

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All current and former non-exempt employees who have worked for Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation (“Defendants”) in California during the time period of November 8, 2017 through [date court grants preliminary approval]. Collectively, these employees will be referred to as “Settlement Class Members.”

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the “Settlement”) in entitled *Francisco Calderon v. SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation*, Los Angeles Superior Court Case No. 20STCV03799 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendants’ records show that you were employed at Defendants as an hourly, non-exempt employee in California between November 8, 2017 through [date court grants preliminary approval] (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Francisco Calderon (“Plaintiff”) brought this Lawsuit against Defendants, seeking to assert claims on behalf of a class of current and former hourly, non-exempt employees who worked for Defendants, in California at any time on or after November 8, 2017. Plaintiff Francisco Calderon is known as the “Class Representative,” and his attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

The Lawsuit alleges that Defendants failed to pay all minimum and overtime wages owed, failed to provide to Settlement Class members all required meal and rest periods, and failed to provide Settlement Class members with itemized wage statements in compliance with California law. The Lawsuit also alleges that Defendants failed to timely pay all wages owed to Settlement Class members upon their separation of employment from Defendants. As a result of the foregoing alleged violations, Plaintiff also alleges that

Defendants engaged in unfair business practices and are liable for civil penalties under the Labor Code Private Attorney General Act.

Defendants deny that they have done anything wrong. Defendants further deny that they owe Settlement Class members any wages, restitution, penalties, or other damages. No Court has made any determination as to the factual allegations in the Lawsuit. Rather, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendants, and they expressly deny all liability. Defendant SmileDirectClub, LLC denies it employed any Settlement Class members in the state of California during the Class Period.

The Court has not ruled that Defendants violated any laws or whether Plaintiff or any other person is entitled to damages or other relief. However, to avoid additional expense, inconvenience, and interference with their business operations, Defendants have concluded that it is in their best interests and the interests of Settlement Class members to settle the Lawsuit on the terms summarized in this Notice. After Defendants provided relevant information to Class Counsel, the Settlement was reached after mediation and arm's-length negotiations between the Parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendants, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Defendants, your decision about whether to participate in the Settlement will not affect your employment. California law and Defendants' policies strictly prohibit unlawful retaliation. Defendants will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of the Settlement Class member's decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for the Plaintiff / Settlement Class Members: LIDMAN LAW, APC Scott M. Lidman slidman@lidmanlaw.com Elizabeth Nguyen enguyen@lidmanlaw.com Milan Moore mmoore@lidmanlaw.com Romina Tamiry rtamiry@lidmanlaw.com 2155 Campus Drive, Suite 150 El Segundo, California 90245 Tel: (424) 322-4772 Fax: (424) 322-4775 www.lidmanlaw.com HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com 155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	Attorneys for Defendants SmileDirectClub, LLC and Jeffrey Sulitzer, D.M.D., Professional Corporation BENESCH FRIEDLANDER, COPLAN & ARONOFF, LLP Johanna Fabrizio Parker JParker@beneschlaw.com 200 Public Square Suite 2300 Cleveland, Ohio 44114 (216) 363-4585 Krista Enns KENns@beneschlaw.com One Montgomery Tower 120 Kearny Street, Suite 2700 San Francisco, CA 94104 Joseph Blalock JBlalock@beneschlaw.com 41 South High Street, Suite 2600 Columbus, OH 43215
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What are the terms of the Settlement?

On [INSERT DATE OF PRELIMINARY APPROVAL], the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees who worked for Defendants in California from November 8, 2017 through [date of preliminary approval]. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendants as described below.

Defendants have agreed to pay \$650,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, which includes payments to Settlement Class members, attorneys’ fees and expenses, payment to the Labor Workforce Development Agency (“LWDA”), settlement administration costs, and the Class Representative’s Service Award. Defendants’ share of payroll taxes associated with any wage payments to Settlement Class members shall be paid by Defendants separately from, and in addition to, the Gross Settlement Amount.

The following deductions from the Gross Settlement Amount will be requested by the Parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators, to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting an amount not to exceed \$7,250.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount, which is estimated to be \$216,666.66, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement in an amount not to exceed \$35,000.00 for verified costs Class Counsel incurred in connection with the Lawsuit.

Service Award to Class Representative. Class Counsel will ask the Court to award the Class Representative a service award in the amount not to exceed \$5,000.00, to compensate him for his service and extra work provided on behalf of the Settlement Class members.

LWDA Payment. Class Counsel will ask the Court to approve a payment in the total amount of \$30,000.00 as and for alleged civil penalties, payable pursuant to the California Labor Code Private Attorney General Act (“PAGA”). Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Twenty-Two Thousand Five Hundred Dollars and Zero Cents (\$22,500.00) will be payable to the LWDA, and the remaining twenty-five percent (25%), or Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), will be payable to certain Settlement Class members as the “PAGA Amount,” as described below.

Calculation of Individual Settlement Class Members’ Settlement Award. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount (“NSA”), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated at approximately \$<< >>, to be shared among an up to << >> estimated Settlement Class members. The NSA will be divided as follows:

- (i) Ninety-Five Percent (95%) of the Net Settlement Fund shall be allocated to Settlement Class Members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked during the Class Period, the numerator of which is the Settlement Class Member’s total workweeks worked during the Class Period, and the

denominator of which is the total workweeks worked by all Settlement Class Members who worked during the Class Period.

- (ii) Five Percent (5%) of the Net Settlement Fund shall be designated as the “Waiting Time Amount.” Each participating Settlement Class member whose employment with Defendants was separated at any time during the Class Period, shall receive a portion of the Waiting Time Amount. Each participating Settlement Class member who was separated from employment with Defendants at any time during the Class Period, shall receive a portion of the Waiting Time Penalty Amount. The Waiting Time Penalty amount shall be divided equally among all Settlement Class members who were separated from their employment during the Class Period.

In addition, Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) of the Gross Settlement Amount has been designated as the “PAGA Amount” as described above. All PAGA Employees shall receive a portion of the PAGA. “PAGA Employees” include all current and former non-exempt, hourly, employees of Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation who worked in California (including those who submit a Request for Exclusion) at any time between January 30, 2019 and [the date the Court enters the order granting preliminary approval] (“PAGA Period”). A PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of Workweeks that he or she worked during the period the PAGA Period and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee’s number of Workweeks worked during the PAGA Period, and the denominator of which is the total number of Workweeks worked by all PAGA Employees during the PAGA Period.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Awards will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion.

If you submit a Request for Exclusion, you will still receive a proportionate share of the PAGA Payment regardless of whether you exclude yourself from the Settlement if you are a PAGA Employee.

Payment by Defendants of Gross Settlement Amount. The Gross Settlement Amount shall be paid by Defendants with the Settlement Administrator within thirty (30) calendar days after the “Effective Date” which is defined as the latter of: (a) the expiration of any appeal period following the Court’s approval of the settlement or (b) the final resolution of any appeal that has been filed.

Within ten (10) calendar days following Defendants’ deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Individual Settlement Award amounts and provide the same to the Parties’ counsel for review and approval. Within seven (7) calendar days of approval by the Parties’ counsel, the Settlement Administrator will prepare and mail Individual Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members.

Allocation and Taxes. For tax purposes, each Settlement Award shall be allocated as follows: sixty-seven percent (67%) as penalties and interest; and thirty-three percent (33%) as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest. Settlement Class members are responsible for the proper income tax treatment of the Individual Settlement Awards. The Settlement Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, the Settlement Class, and each Settlement Class member who has not submitted a timely and valid Request for Exclusion, will release Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation, and all of their past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the “Released Parties”), from all claims, demands, rights, liabilities and

causes of action, whether under state or federal law, that were pled in any of the Complaints in the Action, including the Second Amended Complaint pursuant to the terms of this Agreement, or which could have been pled in any of the Complaints in the Action based on the factual allegations therein, that arose during the Class Period with respect to the following claims: (a) failure to pay all overtime wages owed; (b) failure to pay minimum wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements; (f) failure to pay all wages due upon separation of employment; and (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above (collectively, “Released Claims”). Except as provided for under the Settlement, Class Members who do not opt-out of the Settlement will not be eligible to receive any additional wages or penalty payments based on the Released Claims from Defendants.

The time period of the Released Claims shall be the same time as the Class Period.

PAGA Release and PAGA Employees. If the Court approves the Settlement, all PAGA Employees will release the Released Parties, from all claims, demands, rights, liabilities and causes of action under the California Labor Code Private Attorneys General Act of 2004 based on (as alleged in the letters to the LWDA dated January 30, 2020 and December 9, 2020) the (a) failure to pay all overtime wages owed; (b) failure to pay minimum wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements; and (f) failure to pay all wages due upon separation of employment (collectively, “PAGA Released Claim”).

The time period of the PAGA Released Claim is January 30, 2019 and [the date the Court enters the order granting preliminary approval] (“PAGA Period”).

The Parties acknowledge that under the release, the right of the LWDA to investigate the PAGA Released claim is not released, but the PAGA Released Claim does include any claims for penalties by a PAGA Employee as a result of any such LWDA investigation, and PAGA Employees are barred from their right to act as a private attorney general as to the PAGA Released Claims.

You cannot submit a Request for Exclusion from the PAGA Release.

The releases are null and void if Defendants fail to fully fund the Settlement.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period (as explained above), and as stated in the accompanying Notice of Individual Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Individual Settlement Award. Your award is based on the proportionate number of workweeks you worked during the Class Period, whether you have worked between January 30, 2019 [date of preliminary approval], and whether your employment was separated during the Class Period. The information contained in Defendants’ records regarding all of these factors, along with your estimated Settlement Award, is listed on the accompanying Notice of Individual Settlement Award. If you disagree with the information in your Notice of Individual Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Individual Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>.

DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator's decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written "Request for Exclusion from the Class Action Settlement" letter or card postmarked no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your signature. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE CALDERON V. SMILE DIRECT LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

Send the Request for Exclusion directly to the Settlement Administrator at **<<INSERT ADMINISTRATOR CONTACT INFO>>**. Any person who files a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement.

If you submit a Request for Exclusion, you will only be excluded from the Released Claims. You cannot submit a Request for Exclusion from the PAGA Release. You will receive a proportionate share of the PAGA Payment regardless of whether you exclude yourself from the Settlement if you were employed between January 30, 2019 and [**CLOSE DATE OF THE CLASS PERIOD**].

Do not submit both a Dispute and a Request for Exclusion. If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator. Your written objection must include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Written objections must be postmarked on or before **<<RESPONSE DEADLINE>>**.

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for **<<FINAL APPROVAL HEARING DATE/TIME>>** in Department **[]** of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012. You have the right to appear either remotely, in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before **<<RESPONSE DEADLINE>>**. All objections or other correspondence must state the name and number of the case, which *Francisco Calderon v. SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation*, Los Angeles Case No. 20STCV03799.

Any Class Member who elects to appear personally at the Court for any reason related to this Lawsuit must comply with the Court's social distancing and mandatory face covering requirements, as well as other orders related to COVID-19. All such rules and orders can be located at the Court's website: www.lacourt.org.

For more information on how to appear remotely, please visit the Court's website at <http://www.lacourt.org/division/civil/CI0040.aspx> and <https://www.lacourt.org/lacc/>.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department [] of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Service Award to the Class Representative. The Final Approval Hearing may be postponed without further notice to Settlement Class members. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

Any changes to date, time, or location of the Final Approval Hearing will be posted on the Settlement Administrator's website (<http://com>). Notice of the Court's final judgment will be mailed to you at the same time the Settlement Award is mailed to you.

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Los Angeles County Superior Court, located at 111 North Hill Street, Los Angeles, California 90012, during regular court hours. Due to COVID-19, appointments are required for clerk's office services. Please visit the Court's website at http://www.lacourt.org/newsmedia/uploads/142020529162327NR_Clerks_Office_05_29_20-FINAL.pdf and <https://www.lacourt.org/> for information on how to make an appointment in the Clerk's Office. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, DEFENDANTS OR THEIR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

BY ORDER OF THE COURT ENTERED ON <<PRELIM APPROVAL DATE>>.

NOTICE OF INDIVIDUAL SETTLEMENT AWARD

*FRANCISCO CALDERON V. SMILEDIRECTCLUB, LLC, AND JEFFREY SULITZER, D.M.D.,
PROFESSIONAL CORPORATION*

LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 20STCV03799

Please complete, sign, date and return this form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Individual Settlement Award:

According to SMILEDIRECTCLUB, LLC, AND JEFFREY SULITZER, D.M.D., PROFESSIONAL CORPORATIONS' records ("Defendants"):

- (a) You were employed by Defendants and worked a total of [] workweeks during the time period November 8, 2017 through [<<Preliminary Approval Order>>].
- (b) You were employed by Defendants and worked a total of [] workweeks during the time period January 30, 2019 through [<<Preliminary Approval Order>>].
- (c) You [were/were not] separated from employment with Defendants between the time period November 8, 2017 through [<<Preliminary Approval Order>>].

Based on the above, your Individual Settlement Award is estimated to be \$ [].

(IV) If you disagree with items (a) – (c) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Defendants' records, Defendants' records will control unless you are able to provide documentation that establishes that Defendants' records are mistaken. If there is a dispute about whether Defendants' information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE
POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.**

EXHIBIT C

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Attorneys for Plaintiff
FRANCISCO CALDERON

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

FRANCISCO CALDERON, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

SMILEDIRECTCLUB, LLC, a Tennessee
limited liability company; JEFFREY
SULITZER, D.M.D., PROFESSIONAL
CORPORATION, a California corporation;
and DOES 1 through 100, inclusive,
Defendants.

Case No.: 20STCV03799

*[Assigned for All Purposes to the Hon. Yvette
M. Palazuelos, Dept. SSC-9]*

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, CLASS
REPRESENTATIVE'S SERVICE AWARD,
AND ATTORNEYS' FEES AND COSTS**

Date:
Time:
Dept.: SSC-9

Complaint Filed: January 30, 2020
Trial Date: None Set

1 This matter came on regularly for hearing before this Court on [REDACTED], pursuant to
2 California Rule of Court 3.769 and this Court's [REDACTED] Order Granting Preliminary Approval of Class
3 Action Settlement ("Preliminary Approval Order"). Having considered the parties' Stipulation of
4 Settlement ("Settlement")¹ and the documents and evidence presented in support thereof, and
5 recognizing the sharply disputed factual and legal issues involved in this case, the risks of further
6 prosecution and the substantial benefits to be received by the Settlement Class pursuant to the
7 Settlement, the Court hereby makes a final ruling that the proposed Settlement is fair, reasonable, and
8 adequate, and is the product of good faith, arm's-length negotiations between the parties. Good cause
9 appearing therefor, the Court hereby GRANTS Plaintiff's Motion for Final Approval of Class Action
10 Settlement and ORDERS as follows:

11 1. The conditional class certification contained in the Preliminary Approval Order is hereby
12 made final, and the Court thus certifies, for purposes of the Settlement only, a Settlement Class defined
13 as:

14 All current and former non-exempt, hourly, employees of Defendants
15 SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation
16 who worked in California at any time from November 8, 2017 through the date of
preliminary approval.

17 2. Plaintiff Francisco Calderon is hereby confirmed as Class Representative, and Scott M.
18 Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC and Paul K. Haines of Haines Law
19 Group, APC are hereby confirmed as Class Counsel.

20 3. Notice was provided to the Settlement Class as set forth in the Settlement. The form and
21 manner of notice were approved by the Court on [REDACTED], and the notice process has been
22 completed in conformity with the Court's Order. The Court finds that said notice was the best notice
23 practicable under the circumstances. The Class Notice provided due and adequate notice of the
24 proceedings and matters set forth therein, informed Settlement Class members of their rights, and fully
25 satisfied the requirements of California Code of Civil Procedure § 1781(e), California Rule of Court
26 3.769, and due process.

27 _____
28 ¹ Unless otherwise indicated, all terms used in this Order shall have the same meaning as that assigned to them in the Settlement.

1 4. The Court finds that no Settlement Class member objected to the Settlement, no class
2 member has opted out of the Settlement, and that the % participation rate in the Settlement supports
3 final approval.

4 5. The Court hereby approves the settlement as set forth in the Settlement Agreement as
5 fair, reasonable, and adequate, and directs the parties to effectuate the Settlement Agreement according
6 to its terms.

7 6. For purposes of settlement only, the Court finds that (a) the members of the Settlement
8 Class are ascertainable and so numerous that joinder of all members is impracticable; (b) there are
9 questions of law or fact common to the Settlement Class, and there is a well-defined community of
10 interest among members of the Settlement Class with respect to the subject matter of the litigation; (c)
11 the claims of the Class Representative are typical of the claims of the members of the Settlement Class;
12 (d) the Class Representative has fairly and adequately protected the interests of the Settlement Class
13 members; (e) a class action is superior to other available methods for an efficient adjudication of this
14 controversy; and (f) Class Counsel are qualified to serve as counsel for the Class Representative and the
15 Settlement Class.

16 7. The Court finds that given the absence of objections to the Settlement, and objections
17 being a prerequisite to appeal, that this Order shall be considered final as of the date of notice of entry.

18 8. The Court orders that that Defendants deposit the Gross Settlement Amount of Six
19 Hundred Fifty Thousand Dollars and Zero Cents (\$650,000.00) with Phoenix Settlement Administrators
20 (“Phoenix”), the Settlement Administrator, as provided for in the Settlement.

21 9. Any Settlement funds that remain uncashed after 180 calendar days after they are mailed
22 shall be delivered to the California State Controller’s Office – Unclaimed Property Fund in the name of
23 the Settlement Class member.

24 10. The Court finds that the settlement payments, as provided for in the Settlement, are fair,
25 reasonable, and adequate, and orders the Settlement Administrator to distribute the individual payments
26 in conformity with the terms of the Settlement.

27 //

28 //

1 11. The Court finds that a service award in the amount of \$5,000.00 for Plaintiff Francisco
2 Calderon is appropriate for his risks undertaken and service to the Settlement Class. The Court finds
3 that this award is fair, reasonable, and adequate, and orders that the Settlement Administrator make this
4 payment in conformity with the terms of the Settlement.

5 12. The Court finds that attorneys' fees in the amount of \$216,666.66 and litigation costs of
6 \$ for Class Counsel, are fair, reasonable, and adequate, and orders that the Settlement
7 Administrator distribute these payments to Class Counsel in conformity with the terms of the Settlement.

8 13. The Court orders that the Settlement Administrator shall be paid \$7,250.00 from the
9 Gross Settlement Amount for all of its work done and to be done until the completion of this matter, and
10 finds that sum appropriate.

11 14. The Court finds that the payment to the California Labor & Workforce Development
12 Agency ("LWDA") in the amount of \$22,500.00 for its share of the settlement of Plaintiff's
13 representative action under the California Labor Code Private Attorneys General Act ("PAGA") is fair,
14 reasonable, and adequate, and orders the Settlement Administrator to distribute this payment to the
15 LWDA in conformity with the terms of the Settlement.

16 15. Pursuant to the terms of the Settlement, the employer's share of payroll taxes for the
17 portion of the Net Settlement Amount allocated to wages shall be paid by Defendants separately from,
18 and in addition to, the Gross Settlement Amount.

19 16. The Court finds and determines that upon satisfaction of all obligations under the
20 Settlement and this Order, all Settlement Class members will be bound by the Settlement, will have
21 released the Released Claims as set forth in the Settlement, and will be permanently barred from
22 prosecuting against Defendants any of the Released Claims pursuant to the Settlement.

23 17. The Settlement is not an admission by Defendants nor is this Order a finding of the
24 validity of any allegations, of any wrongdoing by Defendants, of the validity of any Released Claim, or
25 the existence or amount of any damages. Neither this Order, the Settlement, nor any document referred
26 to herein, nor any action taken to carry out the Settlement, shall be construed or deemed an admission
27 of liability, culpability, or wrongdoing on the part of Defendants.

28 //

1 18. The Court will retain jurisdiction to enforce the Settlement, this Final Approval Order,
2 and the Judgment entered in connection with the Settlement.

3 19. The Settlement Administrator shall file a declaration regarding the disbursement of
4 Settlement funds on or before _____.

5
6 **IT IS SO ORDERED.**

7
8 Dated: _____, 2021

Honorable Yvette M. Palazuelos
Judge of the Superior Court

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Attorneys for Plaintiff
FRANCISCO CALDERON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FRANCISCO CALDERON, as an individual
and on behalf of all others similarly situated,

Plaintiff,
vs.

SMILEDIRECTCLUB, LLC, A
TENNESSEE LIMITED LIABILITY
COMPANY; JEFFREY SULITZER,
D.M.D., PROFESSIONAL
CORPORATION, A CALIFORNIA
CORPORATION; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 20STCV03799

*[Assigned for All Purposes to the Hon. Yvette
M. Palazuelos, Dept. SSC-9]*

[PROPOSED] FINAL JUDGMENT

Date:
Time:
Dept.: SSC-9

Complaint Filed: January 30, 2020
Trial Date: None Set

1 This matter came on regularly for hearing before this Court on [REDACTED], pursuant to
2 California Rule of Court 3.769 and this Court's [REDACTED] Order Granting Preliminary Approval of
3 Class Action Settlement ("Preliminary Approval Order"). Having considered the parties' Stipulation of
4 Settlement, ("Settlement")² and the documents and evidence presented in support thereof, and the
5 submissions of counsel, the Court hereby ORDERS and enters JUDGMENT as follows:

6 1. Final judgment ("Judgment") in this matter is hereby entered in conformity with the
7 Settlement, the Preliminary Approval Order, and this Court's Order Granting Final Approval of Class
8 Action Settlement. The Settlement Class is defined as:

9 All current and former non-exempt, hourly, employees of Defendants
10 SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation
11 who worked in California at any time from November 8, 2017 through the date of
preliminary approval.

12 2. Plaintiff Francisco Calderon is hereby confirmed as Class Representative, and Scott M.
13 Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC and Paul K. Haines of Haines Law
14 Group, APC are hereby confirmed as Class Counsel.

15 3. Notice was provided to the Settlement Class as set forth in the Settlement. The form and
16 manner of notice were approved by the Court on [REDACTED], and the notice process has been
17 completed in conformity with the Court's Order. The Court finds that said notice was the best notice
18 practicable under the circumstances. The Class Notice provided due and adequate notice of the
19 proceedings and matters set forth therein, informed Settlement Class members of their rights, and fully
20 satisfied the requirements of California Code of Civil Procedure § 1781(e), California Rule of Court
21 3.769, and due process.

22 4. The Court finds that no Settlement Class member objected to the Settlement, no class
23 member has opted out of the Settlement, and that the [REDACTED] % participation rate in the Settlement supports
24 final approval.

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26
27
28 ² Unless otherwise indicated, all terms used in this Order shall have the same meaning as that assigned to
them in the Settlement.

1 5. The Court hereby approves the settlement as set forth in the Settlement Agreement as
2 fair, reasonable, and adequate, and directs the parties to effectuate the Settlement Agreement according
3 to its terms.

4 6. For purposes of settlement only, the Court finds that (a) the members of the Settlement
5 Class are ascertainable and so numerous that joinder of all members individually is impracticable; (b)
6 there are questions of law or fact common to the Settlement Class, and there is a well-defined community
7 of interest among members of the Settlement Class with respect to the subject matter of the litigation;
8 (c) the claims of the Class Representative are typical of the claims of the members of the Settlement
9 Class; (d) the Class Representative has fairly and adequately protected the interests of the Settlement
10 Class members; (e) a class action is superior to other available methods for an efficient adjudication of
11 this controversy; and (f) Class Counsel are qualified to serve as counsel for the Class Representative and
12 the Settlement Class.

13 7. The Court orders that Defendants deposit the Gross Settlement Amount of Six Hundred
14 Fifty Thousand Dollars and Zero Cents (\$650,000.00) with Phoenix Settlement Administrators
15 (“Phoenix”), the Settlement Administrator, as provided for in the Settlement.

16 8. The Court finds that the settlement payments, as provided for in the Settlement, are fair,
17 reasonable, and adequate, and orders the Settlement Administrator to distribute the individual payments
18 in conformity with the terms of the Settlement.

19 9. The Court finds that a service award in the amount of \$5,000.00 for Plaintiff Francisco
20 Calderon is appropriate for his risks undertaken and service to the Settlement Class. The Court finds
21 that this award is fair, reasonable, and adequate, and orders that the Settlement Administrator make this
22 payment in conformity with the terms of the Settlement.

23 10. The Court finds that attorneys’ fees in the amount of \$216,666.66 and litigation costs of
24 \$ for Class Counsel, are fair, reasonable, and adequate, and orders that the Settlement
25 Administrator distribute these payments to Class Counsel in conformity with the terms of the Settlement.

26 11. The Court orders that the Settlement Administrator shall be paid \$7,250.00 from the
27 Gross Settlement Amount for all of its work done and to be done until the completion of this matter, and
28 finds that sum appropriate.

1 12. The Court finds that the payment to the California Labor & Workforce Development
2 Agency (“LWDA”) in the amount of \$22,500.00 for its share of the settlement of Plaintiff’s
3 representative action under the California Labor Code Private Attorneys General Act (“PAGA”) is fair,
4 reasonable, and adequate, and orders the Settlement Administrator to distribute this payment to the
5 LWDA in conformity with the terms of the Settlement.

6 13. Pursuant to the terms of the Settlement, the employer’s share of payroll taxes for the
7 portion of the Net Settlement Amount allocated to wages shall be paid by Defendants separately from,
8 and in addition to, the Gross Settlement Amount.

9 14. The Court finds and determines that upon satisfaction of all obligations under the
10 Settlement and this Order, all Settlement Class Members will be bound by the Settlement, will have
11 released the Released Claims as set forth in the Settlement, and will be permanently barred from
12 prosecuting against Defendants any of the Released Claims pursuant to the Settlement.

13 15. Upon satisfaction of all obligations under the Settlement and the Final Approval Order,
14 by virtue of this Judgment, Plaintiff and each Settlement Class member, fully and forever completely
15 release and forever discharge Defendants and all of their past and present officers, directors,
16 shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors,
17 consultants, attorneys, and their respective successors and predecessors in interest, subsidiaries,
18 affiliates, parents and attorneys, (collectively the “Released Parties”), from all claims, demands, rights,
19 liabilities and causes of action, whether state or federal law, that were pled in any of the Complaints in
20 the Action, including the Proposed Second Amended Complaint pursuant to the terms of the Settlement,
21 or which could have been pled in any of the Complaints in the Action, whether under state or federal
22 law, that arose during the Class Period with respect to the following claims: (a) failure to pay all overtime
23 wages owed; (b) failure to pay minimum wages owed; (c) failure to provide meal periods, or premium
24 pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for
25 non-compliant rest periods; (e) failure to issue accurate, itemized wage statements; (f) failure to pay all
26 wages due upon separation of employment; and (g) all claims for unfair business practices that could
27 have been premised on the facts, claims, causes of action or legal theories described above (collectively,
28 “Released Claims”). Except as provided for under the Settlement Agreement, Class Members will not

1 be eligible to receive or receive any additional wages or penalty payments based on the Released Claims
2 from Defendants.

3 16. Upon satisfaction of all obligations under the Settlement and the Final Approval Order,
4 by virtue of this Judgment, all current and former non-exempt, hourly, employees of Defendants
5 SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation who worked in
6 California at any time from January 30, 2019 through [the date of preliminary approval], including
7 Plaintiff, will release and forever discharge all claims, demands, rights, liabilities and causes of action
8 under the California Labor Code Private Attorneys General Act of 2004 against the Released Parties
9 based on (as alleged in the letters to the Labor & Workforce Development Agency (“LWDA”) January
10 30, 2020 and December 9, 2020): the (a) failure to pay all overtime wages owed; (b) failure to pay
11 minimum wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal
12 periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods;
13 (e) failure to issue accurate, itemized wage statements; and (f) failure to pay all wages due upon
14 separation of employment that occurred during the PAGA Period (collectively, “PAGA Released
15 Claim”). The PAGA Period and the time period of the PAGA Released Claims is defined as the time
16 period January 30, 2019 through [the date the Court enters the order granting preliminary approval]
17 (“PAGA Period”).

18 17. Pursuant to the Settlement, and in consideration for his service award, Plaintiff and
19 Settlement Class member, Francisco Calderon, in addition to the Released Claims described above,
20 releases all claims, whether known or unknown, under federal, state or local law against the Released
21 Parties through date Plaintiff signs the Stipulation of Settlement. The Parties understand and agree that
22 Plaintiff Francisco Calderon is not, by way of this release, releasing any workers’ compensation claims
23 nor any other claims which cannot be released as a matter of law. Notwithstanding the foregoing,
24 Plaintiff Francisco Calderon understands that this release includes unknown claims and that he is, as a
25 result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which
26 provides:

27 **A general release does not extend to claims which the creditor or releasing**
28 **party does not know or suspect to exist in his or her favor at the time of**
executing the release and that, if known by him or her, would have materially
affected his or her settlement with the debtor or released party.

1 Plaintiff agrees never to sue, join, or otherwise make a claim against any of the Released Parties as to any
2 claim released by Plaintiff.

3 18. The period of the Release shall extend to the limits of the Class Period.

4 19. The releases identified herein shall be null and void should the Settlement not be fully
5 funded. Upon the Effective Date, all Class Members shall be deemed to have, and by operation of
6 Judgment shall have, expressly released, waived and relinquished the Released Claims. The Settlement
7 Class Members (who do not submit a timely Request for Exclusion) shall be enjoined from filing any
8 actions, claims, complaints against the Released Parties regarding the Released Claims.

9 20. This document shall constitute a final judgment pursuant to California Rule of Court
10 3.769(h), which provides, "If the court approves the settlement agreement after the final approval
11 hearing, the court must make and enter judgment. The judgment must include a provision for the
12 retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may
13 not enter an order dismissing the action at the same time as, or after, entry of judgment." The Settlement
14 Administrator shall mail the Notice of the Final Judgment to PAGA Employees and Settlement Class
15 Members with the Settlement Award, if any.

16 21. The Court will retain jurisdiction to enforce the Settlement, the Final Approval Order,
17 and this Judgment.

18 **JUDGMENT IS SO ENTERED.**

19
20 Dated: _____, 2021

21 Honorable Yvette M. Palazuelos
22 Judge of the Superior Court
23
24
25
26
27
28

EXHIBIT D

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Fax: (424) 292-2355

Attorneys for Plaintiff
FRANCISCO CALDERON

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

FRANCISCO CALDERON, as an individual
and on behalf of all others similarly situated,

Plaintiff,
vs.

SMILEDIRECTCLUB, LLC, a Tennessee
limited liability company; JEFFREY
SULITZER, D.M.D., PROFESSIONAL
CORPORATION, a California corporation;
and DOES 1 through 100, inclusive,
Defendants.

Case No.: 20STCV03799

*[Assigned for All Purposes to the Hon. Yvette
M. Palazuelos, Dept. SSC-9]*

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, CLASS
REPRESENTATIVE'S SERVICE AWARD,
AND ATTORNEYS' FEES AND COSTS**

Date:
Time:
Dept.: SSC-9

Complaint Filed: January 30, 2020
Trial Date: None Set

1 The Motion of Plaintiff Francisco Calderon (“Plaintiff”) for Preliminary Approval of Class Action
2 Settlement (“Motion”) came on regularly for hearing before this Court on _____ 2021 at _____ a.m.
3 in Department SSC-9. The Court, having considered the proposed Stipulation of Settlement (the
4 “Settlement”), attached as Exhibit 1 to the Declaration of _____ filed concurrently with the
5 Motion; having considered Plaintiff’s Motion, Memorandum of Points and Authorities in support thereof,
6 and supporting declarations filed therewith; and good cause appearing, HEREBY ORDERS THE
7 FOLLOWING:

8 1. The Court GRANTS preliminary approval of the class action settlement as set forth in the
9 Settlement and finds it terms to be within the range of reasonableness of a settlement that ultimately
10 could be granted approval by the Court at a Final Fairness Hearing. For purposes of the Settlement, the
11 Court finds that the proposed Settlement Class is ascertainable and that there is a sufficiently well-
12 defined community of interest among the members of the Settlement Class in questions of law and fact.
13 Therefore, for settlement purposes only, the Court grants conditional certification of the following
14 Settlement Class:

15 All current and former non-exempt, hourly, employees of Defendants
16 SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation
17 who worked in California at any time from November 8, 2017 through [the date of
18 preliminary approval].

19 2. For purposes of the Settlement, the Court designates named Plaintiff Francisco Calderon
20 as Class Representative, and Scott M. Lidman, Elizabeth Nguyen, Milan Moore, and Romina Tamiry of
21 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel.

22 3. The Court designates Phoenix Settlement Administrators (“Phoenix”) as the third-party
23 Settlement Administrator for mailing notices.

24 4. The Court approves, as to form and content, the Notice of Pendency of Class Action and
25 Proposed Settlement and Notice of Individual Settlement Award attached to the Settlement as **Exhibit**
26 **B.**

27 5. The Court finds that the form of notice to the Settlement Class regarding the pendency of
28 the action and of the Settlement, and the methods of giving notice to Settlement Class members,

1 constitutes the best notice practicable under the circumstances, and constitute valid, due, and sufficient
2 notice to all members of the Settlement Class. The form and method of giving notice complies fully with
3 the requirements of California Code of Civil Procedure section 382, California Civil Code section 1781,
4 California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and other
5 applicable law.

6 6. The Court further approves the procedures for Settlement Class members to opt out of or
7 object to the Settlement, as set forth in the Notice of Pendency of Class Action and Proposed Settlement.

8 7. The procedures and requirements for filing objections in connection with the Final
9 Fairness Hearing are intended to ensure the efficient administration of justice and the orderly presentation
10 of any Settlement Class member's objection to the Settlement, in accordance with the due process rights
11 of all Settlement Class members.

12 8. The Court directs the Settlement Administrator to mail the Notice of Pendency of Class
13 Action and Proposed Settlement and Notice of Individual Settlement Award to all of the Class members
14 in accordance with the terms of the Settlement.

15 9. The Class Notice shall provide at least 60 calendar days' notice for Settlement Class
16 members to opt out of, or object to, the Settlement.

17 10. The Final Fairness Hearing on the question of whether the Settlement should be finally
18 approved as fair, reasonable, and adequate is scheduled in Department SSC-9 of this Court, located at
19 312 N. Spring Street, Los Angeles, California 90012 on _____, 2021 at _____ a.m./ p.m.

20 11. At the Final Fairness Hearing, the Court will consider: (a) whether the Settlement should
21 be finally approved as fair, reasonable, and adequate for the Settlement Class; (b) whether a judgment
22 granting final approval of the Settlement should be entered; and (c) whether Plaintiff's application for
23 reasonable attorneys' fees, reimbursement of litigation expenses, service award to Plaintiff, and payment
24 to the Labor and Workforce Development Agency ("LWDA") for penalties under the Labor Code Private
25 Attorneys General Act ("PAGA") should be granted.

26 12. Counsel for the parties shall file memoranda, declarations, or other statements and
27 materials in support of their request for final approval of the Settlement, attorneys' fees, litigation
28

expenses, Plaintiff's service award, settlement administration costs, and payment to the LWDA for PAGA penalties prior to the Final Fairness Hearing according to the time limits set by the Code of Civil Procedure and the California Rules of Court.

13. Plaintiff is granted leave to file the Second Amended Complaint Class and Representative Action Complaint, which is attached as **Exhibit A** to the Settlement.

14. An implementation schedule is below:

Event	Date	Actual Date
Defendants to provide Class Data to Settlement Administrator	20 calendar days after the Court enters an order granting preliminary approval.	
Settlement Administrator to mail Notice Packets to Class Members	10 business days after receiving Class Data from Defendants	
Deadline for Class Members to request exclusion from, submit disputes, or object to, the Settlement	60 calendar days after mailing of the Notice by the Settlement Administrator	
Deadline for Plaintiff to file Motion for Final Approval of Class Action Settlement (and to respond to any objections):	16 Court days before the Final Fairness Hearing	
Final Fairness Hearing:	_____, 2021	

15. Pending the Final Fairness Hearing, all proceedings in this action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are stayed.

16. Counsel for the parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the Settlement which are not materially inconsistent with either this Order or the terms of the Settlement.

IT IS SO ORDERED.

Dated: _____, 2021

Honorable Yvette M. Palazuelos
Judge of the Superior Court

EXHIBIT 2

EXHIBIT 2

LIDMAN LAW

222 N. SEPULVEDA BOULEVARD, SUITE 1550, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

January 30, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Smiledirectclub, LLC
c/o CSC-Lawyers Incorporating Service,
Agent for Service of Process
2710 Gateway Oaks Dr., Ste. 150N
Sacramento, CA 95833

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RECEIPT REQUESTED**

Smiledirectclub, LLC
414 Union Street 8th Floor
Nashville, TN 37219

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Jeffrey Sulitzer, D.M.D., Professional
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Sacramento, CA 95833

Re: *Francisco Calderon v. Smiledirectclub, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Francisco Calderon in claims arising from his employment with Smiledirectclub, LLC, a Tennessee limited liability company; and Jeffrey Sulitzer, D.M.D., Professional Corporation, a California corporation (“Defendants”). Mr. Calderon is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, an “aggrieved employee” should be considered to include all current and former non-exempt employees in California who worked, at least in part, during the one year immediately preceding the date of this letter through the present date.

Defendants maintain, and maintained throughout the time period relevant to this action, various locations known as SmileShops throughout California, including inside the CVS Pharmacy in Woodlands, California, where Mr. Calderon worked. Mr. Calderon worked for Defendants as an hourly, non-exempt employee approximately March 2019

through approximately January 2, 2020. During his employment, Mr. Calderon worked as a Smile Guide and performed various duties throughout his employment, including without limitation, explaining the products and guiding customers through timelines and payment plans.

During his employment with Defendants, Mr. Calderon was typically scheduled to begin his shift at 11:30 a.m. and would clock-in using Defendants' UltiPro timekeeping system that automatically populated his clock-in time.

Throughout Mr. Calderon's employment with Defendants, Defendants would keep track of Mr. Calderon's time worked and would unlawfully shave Mr. Calderon's work time and/or round Mr. Calderon's work time such that Mr. Calderon would not be fully paid for all time worked. This time shaving/rounding practice utilized by Defendants was not-even handed over time and would round and shave in Defendants' favor such that Mr. Calderon was routinely underpaid for his time worked. Further, during Mr. Calderon's employment with Defendants, because he would on occasion work in excess of 8 hours per workday and/or 40 hours per work week, had Mr. Calderon been properly paid for all of the time that he actually worked, he would have been paid additional overtime wages. This practice by Defendants resulted in Defendants not properly tracking the time worked by Mr. Calderon, and also resulted in Defendants paying Mr. Calderon less than he was owed for the work he performed, including failing to pay him all required minimum wages and overtime wages.

Throughout Mr. Calderon's employment with Defendants, Mr. Calderon was not provided all required meal periods due to Defendants' meal period policies/practices which fail to provide uninterrupted, duty-free and timely 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically, due to his job duties, Mr. Calderon was often prevented from taking meal periods that commenced before the end of the fifth hour of work and/or a meal period altogether. This policy and practice of Defendants of failing to provide lawful and timely meal periods to Mr. Calderon violates California law.

Although Mr. Calderon was not provided with all legally-compliant meal periods to which he was entitled, Defendants failed to compensate Mr. Calderon with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the relevant period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Mr. Calderon and their non-exempt employees.

Mr. Calderon was also not authorized and permitted to take all required rest periods due to Defendants' rest period policies/practices. Defendants' rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or major fraction thereof. Specifically, during the shifts when Mr. Calderon worked alone, Defendants' policy and practice prohibited him from taking any rest periods.

On those occasions when Mr. Calderon was not authorized and permitted to take all legally required rest periods to which he was entitled, Defendants failed to compensate Mr. Calderon with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the relevant period, Defendants maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to their non-exempt employees.

As a result of Defendants' failure to pay all overtime and minimum wages owed, and failure to pay all meal and rest period premium wages, Defendants failed to provide Mr. Calderon with accurate, itemized wage statements. Additionally, Defendants' wage statements were also deficient in the pay periods Defendants paid Mr. Calderon a non-discretionary bonus based on his sales for the month. Specifically, when Defendants paid Mr. Calderon wages identified as "CO LOOKBACK", Defendants failed to list the pay rate and hours on his wage statements.

As a further result of Defendants' failure to pay all overtime and minimum wages owed, and failure to pay all meal and rest period premium wages, Defendants failed to pay Mr. Calderon all of his wages owed upon his separation of employment with Defendants.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 4 ("Wage Order 4"):

Overtime Violations

As alleged above, Defendants would keep track of Mr. Calderon's time worked and would unlawfully shave Mr. Calderon's work time and/or round his work time such that he would not be fully paid for all time worked. This time shaving/rounding practice utilized by Defendants was not-even handed over time and would round and shave in Defendants' favor such that Mr. Calderon was routinely underpaid for his time worked. Further, during Mr. Calderon's employment with Defendants, because he would on occasion work in excess of 8 hours per workday and/or 40 hours per work week, had Mr. Calderon been properly paid for all of the time that he actually worked, he would have been paid additional overtime wages. This practice by Defendants resulted in Defendants not properly tracking the time worked by Mr. Calderon, and also resulted in Defendants paying Mr. Calderon less than he was owed for the work he performed, including failing to pay him all required overtime wages. Defendants were required to pay Mr. Calderon and other aggrieved employees overtime wages for all hours worked in excess of ten hours per workday and/or six days per workweek. See Labor Code §§ 1194(a) and 1198; the Wage Order 4, § 3. Wage Order 4 § 3 requires an employer to pay an employee "one and one-half (1 ½) times the employee's regular rate" for all over ten hours in a work day and for the first eight hours on the seventh day of work and double the employee's regular rate for all hours worked over eight on the seventh day of work in a workweek.

Minimum Wage Violations

Defendants were required to pay Mr. Calderon and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 4, § 4. Mr. Calderon and other aggrieved employees were not paid for all hours worked due to Defendants' timekeeping and compensation practices. As alleged above, Defendants caused Mr. Calderon and other aggrieved employees to work hours in a workweek but did not properly compensate Mr. Calderon and other aggrieved employees at least minimum wages for all such hours, due to Defendants' unlawful time-shaving and/or rounding practice that would almost exclusively round and shave in Defendants' favor such that Mr. Calderon and other aggrieved employees were routinely unpaid for their time worked.

Meal Period Violations

As alleged above, due to his job duties, Mr. Calderon was often prevented from taking meal periods that commenced before the end of the fifth hour of work and/or a meal period altogether. Therefore, Defendants failed to provide Mr. Calderon and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 4, § 11. As a result, Mr. Calderon and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Mr. Calderon was not provided with all legally-compliant meal periods to which he was entitled, Defendants failed to compensate Mr. Calderon and other aggrieved employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Mr. Calderon and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 4, § 12. Specifically, during the shifts when Mr. Calderon worked alone, Defendants' policy and practice prohibited him from taking any rest periods. As a result, Mr. Calderon and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Calderon and other aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, meal and rest period premium wages, and total gross and net wages earned, in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Mr. Calderon and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendants' reported data.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendants failed to timely pay Mr. Calderon and other aggrieved employees all of their final wages at the time of separation, which included, among other things, underpaid overtime wages. Pursuant to Labor Code § 203, Defendants' failure to pay all final wages due to Mr. Calderon and other aggrieved employees was willful and, consequently, entitles Mr. Calderon and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendants failed to pay their final wages after their separation, up to a maximum of thirty days.

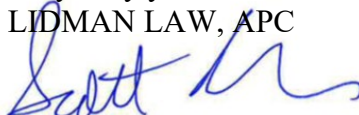
As an "aggrieved employee," Mr. Calderon will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Calderon own investigation, and on information and belief, Defendants committed the following Labor Code violations:

- a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Calderon and other aggrieved employees all overtime compensation earned;
- b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Calderon and other aggrieved employees the statutory minimum wage for all hours worked;
- c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Calderon and other aggrieved employees;

- d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Calderon and other aggrieved employees;
- e) Defendants violated Labor Code § 226 by failing to furnish Mr. Calderon and other aggrieved employees with accurate and compliant itemized wage statements;
- f) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Calderon and other aggrieved employees;
- g) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Calderon and other aggrieved employees; and
- h) Defendants violated Labor Code § 204 by failing to pay Mr. Calderon and other aggrieved employees all earned wages at least twice during each calendar month.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC



Scott M. Lidman

EXHIBIT 3

EXHIBIT 3

LIDMAN LAW

222 N. SEPULVEDA BOULEVARD, SUITE 1550, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

December 9, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN

RECEIPT REQUESTED

Krista Enns, Esq.
**BENESCH, FRIEDLANDER,
COPLAN & ARONOFF, LLP**
One Montgomery, Suite 2700
San Francisco, California 94104
Tel: (628) 600-2250
Fax: (628) 221-5828

Attorneys for Defendants
SMILEDIRECTCLUB, LLC, and JEFFREY
SULITZER, D.M.D., Professional Corporation

Re: *Francisco Calderon v. Smiledirectclub, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Francisco Calderon in claims arising from his employment with Smiledirectclub, LLC, a Tennessee limited liability company; and Jeffrey Sulitzer, D.M.D., Professional Corporation, a California corporation (“Defendants”). Mr. Calderon is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, an “aggrieved employee” should be considered to include all current and former non-exempt employees in California who worked, at least in part, during the one year immediately preceding the date of this letter through the present date.

By this letter, Mr. Calderon hereby supplements his correspondence to the LWDA dated January 30, 2020 (the “LWDA letter”). Attached hereto as **Exhibit A** is a true and correct copy of the LWDA letter and is incorporated herein by reference. In the letter dated January 30, 2020, Mr. Calderon identified a cause of action under Labor Code section 203. In addition to the factual allegations identified in the LWDA letter, Mr. Calderon alleges Defendants are also liable for the following:

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. In paying Mr. Calderon his final wages due on an ATM card without his voluntary authorization (which is a form that was not

negotiable and payable, on demand, without discount at an established business in the state of California), Defendants failed to timely pay Mr. Calderon and other aggrieved employees all of their final wages due at the time of separation. Pursuant to Labor Code § 203, Defendants' failure to pay all final wages due to Mr. Calderon and other aggrieved employees in a form that was negotiable and payable, on demand, without discount at an established business in the state of California was willful and, consequently, entitles Mr. Calderon and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendants failed to pay their final wages after their separation, up to a maximum of thirty days.

As an "aggrieved employee," Mr. Calderon will amend his civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Calderon own investigation, and on information and belief, Defendants committed the following Labor Code violations:

- a) Defendants violated Labor Code §§ 201, 202 and 203 by paying Mr. Calderon and other aggrieved employees their final wages due on an ATM card without his voluntary authorization (which is a form that was not negotiable and payable, on demand, without discount at an established business in the state of California). As a result, Defendants failed to timely pay Mr. Calderon and other aggrieved employees all of their final wages due at the time of separation.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC



Scott M. Lidman

LIDMAN LAW

222 N. SEPULVEDA BOULEVARD, SUITE 1550, EL SEGUNDO, CA 90245
OFFICE: (424) 322-4772
FAX: (424) 322-4775

January 30, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

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Throughout Mr. Calderon's employment with Defendants, Defendants would keep track of Mr. Calderon's time worked and would unlawfully shave Mr. Calderon's work time and/or round Mr. Calderon's work time such that Mr. Calderon would not be fully paid for all time worked. This time shaving/rounding practice utilized by Defendants was not-even handed over time and would round and shave in Defendants' favor such that Mr. Calderon was routinely underpaid for his time worked. Further, during Mr. Calderon's employment with Defendants, because he would on occasion work in excess of 8 hours per workday and/or 40 hours per work week, had Mr. Calderon been properly paid for all of the time that he actually worked, he would have been paid additional overtime wages. This practice by Defendants resulted in Defendants not properly tracking the time worked by Mr. Calderon, and also resulted in Defendants paying Mr. Calderon less than he was owed for the work he performed, including failing to pay him all required minimum wages and overtime wages.

Throughout Mr. Calderon's employment with Defendants, Mr. Calderon was not provided all required meal periods due to Defendants' meal period policies/practices which fail to provide uninterrupted, duty-free and timely 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically, due to his job duties, Mr. Calderon was often prevented from taking meal periods that commenced before the end of the fifth hour of work and/or a meal period altogether. This policy and practice of Defendants of failing to provide lawful and timely meal periods to Mr. Calderon violates California law.

Although Mr. Calderon was not provided with all legally-compliant meal periods to which he was entitled, Defendants failed to compensate Mr. Calderon with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the relevant period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Mr. Calderon and their non-exempt employees.

Mr. Calderon was also not authorized and permitted to take all required rest periods due to Defendants' rest period policies/practices. Defendants' rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or major fraction thereof. Specifically, during the shifts when Mr. Calderon worked alone, Defendants' policy and practice prohibited him from taking any rest periods.

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As a result of Defendants' failure to pay all overtime and minimum wages owed, and failure to pay all meal and rest period premium wages, Defendants failed to provide Mr. Calderon with accurate, itemized wage statements. Additionally, Defendants' wage statements were also deficient in the pay periods Defendants paid Mr. Calderon a non-discretionary bonus based on his sales for the month. Specifically, when Defendants paid Mr. Calderon wages identified as "CO LOOKBACK", Defendants failed to list the pay rate and hours on his wage statements.

As a further result of Defendants' failure to pay all overtime and minimum wages owed, and failure to pay all meal and rest period premium wages, Defendants failed to pay Mr. Calderon all of his wages owed upon his separation of employment with Defendants.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 4 ("Wage Order 4"):

Overtime Violations

As alleged above, Defendants would keep track of Mr. Calderon's time worked and would unlawfully shave Mr. Calderon's work time and/or round his work time such that he would not be fully paid for all time worked. This time shaving/rounding practice utilized by Defendants was not-even handed over time and would round and shave in Defendants' favor such that Mr. Calderon was routinely underpaid for his time worked. Further, during Mr. Calderon's employment with Defendants, because he would on occasion work in excess of 8 hours per workday and/or 40 hours per work week, had Mr. Calderon been properly paid for all of the time that he actually worked, he would have been paid additional overtime wages. This practice by Defendants resulted in Defendants not properly tracking the time worked by Mr. Calderon, and also resulted in Defendants paying Mr. Calderon less than he was owed for the work he performed, including failing to pay him all required overtime wages. Defendants were required to pay Mr. Calderon and other aggrieved employees overtime wages for all hours worked in excess of ten hours per workday and/or six days per workweek. See Labor Code §§ 1194(a) and 1198; the Wage Order 4, § 3. Wage Order 4 § 3 requires an employer to pay an employee "one and one-half (1 ½) times the employee's regular rate" for all over ten hours in a work day and for the first eight hours on the seventh day of work and double the employee's regular rate for all hours worked over eight on the seventh day of work in a workweek.

Minimum Wage Violations

Defendants were required to pay Mr. Calderon and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 4, § 4. Mr. Calderon and other aggrieved employees were not paid for all hours worked due to Defendants' timekeeping and compensation practices. As alleged above, Defendants caused Mr. Calderon and other aggrieved employees to work hours in a workweek but did not properly compensate Mr. Calderon and other aggrieved employees at least minimum wages for all such hours, due to Defendants' unlawful time-shaving and/or rounding practice that would almost exclusively round and shave in Defendants' favor such that Mr. Calderon and other aggrieved employees were routinely unpaid for their time worked.

Meal Period Violations

As alleged above, due to his job duties, Mr. Calderon was often prevented from taking meal periods that commenced before the end of the fifth hour of work and/or a meal period altogether. Therefore, Defendants failed to provide Mr. Calderon and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 4, § 11. As a result, Mr. Calderon and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Mr. Calderon was not provided with all legally-compliant meal periods to which he was entitled, Defendants failed to compensate Mr. Calderon and other aggrieved employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Mr. Calderon and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 4, § 12. Specifically, during the shifts when Mr. Calderon worked alone, Defendants' policy and practice prohibited him from taking any rest periods. As a result, Mr. Calderon and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Calderon and other aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, meal and rest period premium wages, and total gross and net wages earned, in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Mr. Calderon and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendants' reported data.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendants failed to timely pay Mr. Calderon and other aggrieved employees all of their final wages at the time of separation, which included, among other things, underpaid overtime wages. Pursuant to Labor Code § 203, Defendants' failure to pay all final wages due to Mr. Calderon and other aggrieved employees was willful and, consequently, entitles Mr. Calderon and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendants failed to pay their final wages after their separation, up to a maximum of thirty days.

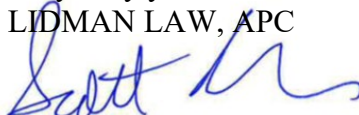
As an "aggrieved employee," Mr. Calderon will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Calderon own investigation, and on information and belief, Defendants committed the following Labor Code violations:

- a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Calderon and other aggrieved employees all overtime compensation earned;
- b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Calderon and other aggrieved employees the statutory minimum wage for all hours worked;
- c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Calderon and other aggrieved employees;

- d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Calderon and other aggrieved employees;
- e) Defendants violated Labor Code § 226 by failing to furnish Mr. Calderon and other aggrieved employees with accurate and compliant itemized wage statements;
- f) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Calderon and other aggrieved employees;
- g) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Calderon and other aggrieved employees; and
- h) Defendants violated Labor Code § 204 by failing to pay Mr. Calderon and other aggrieved employees all earned wages at least twice during each calendar month.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC



Scott M. Lidman

EXHIBIT A

EXHIBIT A

LIDMAN LAW

222 N. SEPULVEDA BOULEVARD, SUITE 1550, EL SEGUNDO, CA 90245
OFFICE: (424) 322-4772
FAX: (424) 322-4775

January 30, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Smiledirectclub, LLC
c/o CSC-Lawyers Incorporating Service,
Agent for Service of Process
2710 Gateway Oaks Dr., Ste. 150N
Sacramento, CA 95833

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Smiledirectclub, LLC
414 Union Street 8th Floor
Nashville, TN 37219

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Jeffrey Sulitzer, D.M.D., Professional
Corporation
414 Union Street 8th Floor
Nashville, TN 37219

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Jeffrey Sulitzer, D.M.D., Professional
Corporation
c/o CSC-Lawyers Incorporating Service, Agent
for Service of Process
2710 Gateway Oaks Dr., Ste. 150N
Sacramento, CA 95833

Re: *Francisco Calderon v. Smiledirectclub, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Francisco Calderon in claims arising from his employment with Smiledirectclub, LLC, a Tennessee limited liability company; and Jeffrey Sulitzer, D.M.D., Professional Corporation, a California corporation (“Defendants”). Mr. Calderon is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, an “aggrieved employee” should be considered to include all current and former non-exempt employees in California who worked, at least in part, during the one year immediately preceding the date of this letter through the present date.

Defendants maintain, and maintained throughout the time period relevant to this action, various locations known as SmileShops throughout California, including inside the CVS Pharmacy in Woodlands, California, where Mr. Calderon worked. Mr. Calderon worked for Defendants as an hourly, non-exempt employee approximately March 2019

through approximately January 2, 2020. During his employment, Mr. Calderon worked as a Smile Guide and performed various duties throughout his employment, including without limitation, explaining the products and guiding customers through timelines and payment plans.

During his employment with Defendants, Mr. Calderon was typically scheduled to begin his shift at 11:30 a.m. and would clock-in using Defendants' UltiPro timekeeping system that automatically populated his clock-in time.

Throughout Mr. Calderon's employment with Defendants, Defendants would keep track of Mr. Calderon's time worked and would unlawfully shave Mr. Calderon's work time and/or round Mr. Calderon's work time such that Mr. Calderon would not be fully paid for all time worked. This time shaving/rounding practice utilized by Defendants was not-even handed over time and would round and shave in Defendants' favor such that Mr. Calderon was routinely underpaid for his time worked. Further, during Mr. Calderon's employment with Defendants, because he would on occasion work in excess of 8 hours per workday and/or 40 hours per work week, had Mr. Calderon been properly paid for all of the time that he actually worked, he would have been paid additional overtime wages. This practice by Defendants resulted in Defendants not properly tracking the time worked by Mr. Calderon, and also resulted in Defendants paying Mr. Calderon less than he was owed for the work he performed, including failing to pay him all required minimum wages and overtime wages.

Throughout Mr. Calderon's employment with Defendants, Mr. Calderon was not provided all required meal periods due to Defendants' meal period policies/practices which fail to provide uninterrupted, duty-free and timely 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically, due to his job duties, Mr. Calderon was often prevented from taking meal periods that commenced before the end of the fifth hour of work and/or a meal period altogether. This policy and practice of Defendants of failing to provide lawful and timely meal periods to Mr. Calderon violates California law.

Although Mr. Calderon was not provided with all legally-compliant meal periods to which he was entitled, Defendants failed to compensate Mr. Calderon with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the relevant period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Mr. Calderon and their non-exempt employees.

Mr. Calderon was also not authorized and permitted to take all required rest periods due to Defendants' rest period policies/practices. Defendants' rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or major fraction thereof. Specifically, during the shifts when Mr. Calderon worked alone, Defendants' policy and practice prohibited him from taking any rest periods.

On those occasions when Mr. Calderon was not authorized and permitted to take all legally required rest periods to which he was entitled, Defendants failed to compensate Mr. Calderon with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the relevant period, Defendants maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to their non-exempt employees.

As a result of Defendants' failure to pay all overtime and minimum wages owed, and failure to pay all meal and rest period premium wages, Defendants failed to provide Mr. Calderon with accurate, itemized wage statements. Additionally, Defendants' wage statements were also deficient in the pay periods Defendants paid Mr. Calderon a non-discretionary bonus based on his sales for the month. Specifically, when Defendants paid Mr. Calderon wages identified as "CO LOOKBACK", Defendants failed to list the pay rate and hours on his wage statements.

As a further result of Defendants' failure to pay all overtime and minimum wages owed, and failure to pay all meal and rest period premium wages, Defendants failed to pay Mr. Calderon all of his wages owed upon his separation of employment with Defendants.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 4 ("Wage Order 4"):

Overtime Violations

As alleged above, Defendants would keep track of Mr. Calderon's time worked and would unlawfully shave Mr. Calderon's work time and/or round his work time such that he would not be fully paid for all time worked. This time shaving/rounding practice utilized by Defendants was not-even handed over time and would round and shave in Defendants' favor such that Mr. Calderon was routinely underpaid for his time worked. Further, during Mr. Calderon's employment with Defendants, because he would on occasion work in excess of 8 hours per workday and/or 40 hours per work week, had Mr. Calderon been properly paid for all of the time that he actually worked, he would have been paid additional overtime wages. This practice by Defendants resulted in Defendants not properly tracking the time worked by Mr. Calderon, and also resulted in Defendants paying Mr. Calderon less than he was owed for the work he performed, including failing to pay him all required overtime wages. Defendants were required to pay Mr. Calderon and other aggrieved employees overtime wages for all hours worked in excess of ten hours per workday and/or six days per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 4, § 3. Wage Order 4 § 3 requires an employer to pay an employee "one and one-half (1 ½) times the employee's regular rate" for all over ten hours in a work day and for the first eight hours on the seventh day of work and double the employee's regular rate for all hours worked over eight on the seventh day of work in a workweek.

Minimum Wage Violations

Defendants were required to pay Mr. Calderon and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 4, § 4. Mr. Calderon and other aggrieved employees were not paid for all hours worked due to Defendants' timekeeping and compensation practices. As alleged above, Defendants caused Mr. Calderon and other aggrieved employees to work hours in a workweek but did not properly compensate Mr. Calderon and other aggrieved employees at least minimum wages for all such hours, due to Defendants' unlawful time-shaving and/or rounding practice that would almost exclusively round and shave in Defendants' favor such that Mr. Calderon and other aggrieved employees were routinely unpaid for their time worked.

Meal Period Violations

As alleged above, due to his job duties, Mr. Calderon was often prevented from taking meal periods that commenced before the end of the fifth hour of work and/or a meal period altogether. Therefore, Defendants failed to provide Mr. Calderon and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 4, § 11. As a result, Mr. Calderon and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Mr. Calderon was not provided with all legally-compliant meal periods to which he was entitled, Defendants failed to compensate Mr. Calderon and other aggrieved employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Mr. Calderon and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 4, § 12. Specifically, during the shifts when Mr. Calderon worked alone, Defendants' policy and practice prohibited him from taking any rest periods. As a result, Mr. Calderon and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Calderon and other aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, meal and rest period premium wages, and total gross and net wages earned, in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Mr. Calderon and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendants' reported data.

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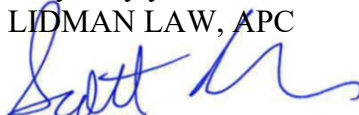
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Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

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LIDMAN LAW, APC



Scott M. Lidman