

AMENDED STIPULATION OF SETTLEMENT

This Amended 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 Second Amended Complaint was filed on May 14, 2021.

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 that were pled in, or arising out of facts asserted in, the operative Second Amended Complaint 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. The releases identified herein shall become effective on the date on which Defendants fully funds the settlement (“Effective Date of the Release”). Upon the Effective Date of the Release, all Class Members shall be deemed to have, and by operation of Judgment (defined below) shall have, released, waived and relinquished 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 B (“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. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. 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 A), and directing the mailing of same;
- G. Staying all other proceedings in the Action until Final Approval; and
- H. Scheduling a Final Approval hearing.

The Preliminary Approval Order shall be substantially the same as the proposed order attached as Exhibit C. 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 A 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. 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 B). 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, KENns@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: May 28, 2021

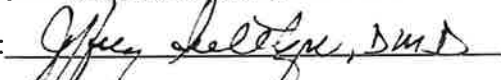
DEFENDANT SMILEDIRECTCLUB, LLC

By: 

Its: Chief Legal Officer and EVP Business Affairs

DATED: May 28, 2021

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

By: 

Its: Owner

DATED:

PLAINTIFF FRANCISCO CALDERON

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: June 1, 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

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: DEFENDANT SMILEDIRECTCLUB, LLC
By: _____
Its: _____

DATED: DEFENDANT JEFFREY SULITZER, D.M.D.,
PROFESSIONAL CORPORATION
By: _____
Its: _____

DATED: Jun 1, 2021 PLAINTIFF FRANCISCO CALDERON
By:  _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: 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: June 3, 2021

HAINES LAW GROUP, APC

By: 
Paul K. Haines
Attorneys for Plaintiff Francisco Calderon

DATED: June 3, 2021

LIDMAN LAW, APC

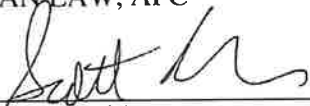
By: 
Scott M. Lidman
Attorneys for Plaintiff Francisco Calderon

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

FRANCISCO CALDERON,

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

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”) 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 aside 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.

Each member of the Settlement Class who receives a Settlement Award must cash the check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class Members whose checks were not cashed within 180 days after mailing will be transferred to the California Secretary of State-Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class Member.

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 that were pled in, or arising out of facts asserted in, the operative Second Amended Complaint 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. The releases identified herein shall become effective on the date on which Defendants fully fund the Settlement (“Effective Date of the Release”). Upon the Effective Date of the Release, all Class Members shall be deemed to have, and by operation of Judgment (defined below) shall have, released, waived and relinquished the Released.

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, your signature, and a statement indicating that you would like to be excluded from the Class Action Settlement.

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 (*Francisco Calderon v. SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation*, Los Angeles County Superior Court, 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 CORPORATION's 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 B

LIDMAN LAW, APC

Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
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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 _____, pursuant to
2 California Rule of Court 3.769 and this Court's _____ 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 _____, 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 //

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

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

IT IS SO ORDERED.

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 _____, pursuant to
2 California Rule of Court 3.769 and this Court's _____ 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 _____, 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 ____% participation rate in the Settlement supports
24 final approval.

25
26
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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 that were pled in, or arising out of facts asserted in, the operative Second
20 Amended Complaint that arose during the Class Period with respect to the following claims: (a) failure
21 to pay all overtime wages owed; (b) failure to pay minimum wages owed; (c) failure to provide meal
22 periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods,
23 or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements;
24 (f) failure to pay all wages due upon separation of employment; and (g) all claims for unfair business
25 practices that could have been premised on the facts, claims, causes of action or legal theories described
26 above (collectively, "Released Claims"). Except as provided for under the Settlement Agreement, Class
27 Members will not be eligible to receive or receive any additional wages or penalty payments based on
28 the Released Claims from Defendants.

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

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

25 **A general release does not extend to claims which the creditor or releasing**
26 **party does not know or suspect to exist in his or her favor at the time of**
27 **executing the release and that, if known by him or her, would have materially**
28 **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
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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
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
16 All current and former non-exempt, hourly, employees of Defendants
17 SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation
18 who worked in California at any time from November 8, 2017 through [the date of
19 preliminary approval].

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

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

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

28 5. The Court finds that the form of notice to the Settlement Class regarding the pendency of
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

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

4 13. 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 14. Pending the Final Fairness Hearing, all proceedings in this action, other than proceedings
16 necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are stayed.

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

20 **IT IS SO ORDERED.**

21 Dated: _____, 2021

22
23
24 Honorable Yvette M. Palazuelos
Judge of the Superior Court