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Attorneys for Plaintiff
FRANCISCO CALDERON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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,

Defendants.

Case No. 20STCV03799

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

**DECLARATION OF ELIZABETH
NGUYEN IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, CLASS
REPRESENTATIVE'S ENHANCEMENT
PAYMENT, AND ATTORNEYS' FEES
AND COSTS**

Date: January 11, 2022
Time: 10:00 a.m.
Dept.: SSC-9

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

1 I, ELIZABETH NGUYEN, declare as follows:

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

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

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

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

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

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

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

15 ► *Branch v. PM Realty Group, Inc.* Case No. BC575759, Los Angeles Superior Court,
16 County of Los Angeles, Honorable Ann Jones, presiding.

17 ► *Herrera v. Pharmavite, LLC*, Case No. BC599201, Los Angeles Superior Court, County
18 of Los Angeles, Honorable Judge Carolyn Kuhl, presiding.

19 ► *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx, United States
20 District Court, Central District of California, Honorable Judge Percy Anderson, presiding.

21 ► *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx, United States
22 District Court, Central District of California, Honorable Judge Percy Anderson, presiding.

23 ► *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932, California Superior
24 Court, County of Los Angeles, Honorable Judge Jane Johnson, presiding.¹

25 ► *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346, California Superior
26 Court, County of Orange, Honorable Judge Thierry Patrick Colaw, presiding.

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

1 ▶ *Page v. Luxottica Retail North America, Inc.*, Case No. FCS041512, California Superior
2 Court, County of Solano, Honorable Judge Paul Berman, presiding.

3 ▶ *Parker v. FedEx National LTL, Inc.*, Case No. 11-CV-006380-DSF-FFM, United States
4 District Court, Central District of California, Honorable Judge Dale Fischer, presiding.

5 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United States
6 District Court, Central District of California, Honorable Judge Margaret Morrow, presiding.

7 ▶ *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United States District
8 Court, Central District of California, Honorable Judge Margaret Morrow, presiding.

9 ▶ *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-CTL, California
10 Superior Court, County of San Diego, Honorable Judge Jeffrey B. Barton, presiding.

11 ▶ *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California Superior Court,
12 County of Santa Clara.

13 ▶ *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California Superior Court,
14 County of Los Angeles, Honorable Judge Terry Green, presiding.

15 ▶ *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California Superior Court,
16 County of San Francisco.

17 ▶ *Robertson v. FedEx National LTL, Inc.*, Case No. 09-CV-05016-DSF-FFM, United States
18 District Court, Central District of California, Honorable Judge Dale Fischer, presiding.

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

21 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to start a law firm
22 with another former Littler Mendelson Shareholder, Scott M. Lidman, to represent employees with work-
23 related claims, including primarily wage and hour claims and almost exclusively on a class-action basis.
24 I am currently a Shareholder of Lidman Law, APC. Currently, over ninety percent (90%) of my practice
25 is dedicated exclusively to the prosecution of wage and hour class actions, and I am currently responsible
26 for prosecuting over sixty-five (65) wage and hour class actions filed in State courts throughout
27 California, with several of them having been removed to Federal courts. I believe that my professional
28 experience renders me more than qualified to serve as class counsel in this lawsuit involving claims of

underpaid overtime and minimum wages, meal and rest period violations, and derivative penalty claims. Not only have I litigated dozens of wage and hour cases throughout my career involving similar claims, including the wage and hour class actions identified above, I have litigated similar claims from both plaintiff and defense perspectives. As a result, I am able to realistically assess and evaluate the facts and legal arguments that can be made in pursuit and defense of similar wage and hour claims, as well as those facts and arguments in support and in opposition to class certification. Consequently, I am able to appreciate the significant risks, uncertainties, and delay involved in wage and hour class action litigation.

8. I have been appointed Class Counsel in: *Guardado v. Wesley Allen, Inc.*, Case No. BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court, County of Los Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances, Inc.*, Case No. 30-2017-00964213-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Claster presiding; *Hanke v. C&W Facility Services, Inc.*, Case No. CIVDS1814412, California Superior Court, County of San Bernardino, Honorable Judge David Cohn presiding; *Molina v. Mader News, Inc.*, Case No. BC685960, California Superior Court, County of Los Angeles, Honorable Judge Yvette M. Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc.*, Case No. BC688326, California Superior Court, County of Los Angeles, Honorable Judge William F. Highberger presiding; *Rodriguez v. H.F. Cox, Inc.*, Case No. BC653164, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Teran v. Western Plastics, Inc.*, Case No. RIC1722619, California Superior Court, County of Riverside, Honorable Judge Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc.*, Case No. BC688477, California Superior Court, County of Los Angeles, Honorable Judge Daniel J. Buckley presiding; *Huynh v. Polypeptide Laboratories, Inc.*, Case No. BC680872, California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Guzman v. Century Blinds*, Case No. RIC1723654, California Superior Court, County of Riverside, Honorable Judge Sunshine S. Sykes presiding; *George v. Convergence Marketing*, Case No. CIVDS1901039, California Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Coffee, et al. v. Flyers*

1 *Transportation Energy, LLC*, Case No. 34-2017-00222084, California Superior Court, County of
2 Sacramento, Honorable Judge Alan G. Perkins presiding; *Romero v. Fillmore Hospitality, LLC*, Case
3 No. BC705667, California Superior Court, County of Los Angeles, Honorable Judge Maren E. Nelson
4 presiding; *Wennerstrom, et al. v. Giant Inland Empire R.V. Center*, Case No. CIVDS1617291, California
5 Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Contreras, et al.*
6 *v. Letter Ride, LLC*, Case No. 37-2018-00020841-CU-OE-CTL, California Superior Court, County of
7 San Diego, Honorable Judge Eddie C. Sturgeon presiding; *Davis v. WeDriveU*, Case No. 18CV322578,
8 California Superior Court, County of Santa Clara, Honorable Judge Brian C. Walsh presiding; *Acuna v.*
9 *Canton Food Co., Inc.*, Case No. BC685001, California Superior Court, County of Los Angeles,
10 Honorable Judge David S. Cunningham presiding; and *Contreras v. Worldwide Flight Services, Inc.*,
11 Case No. 2:18-cv-06036-PSG-SS, United States District Court for the Central District of California, the
12 Honorable Judge Philip S. Gutierrez presiding.

13 9. As co-counsel for Plaintiff and the proposed Settlement Class, I have been intimately
14 involved in every aspect of this case from the time my firm became co-counsel through the present, and
15 I believe that the proposed Settlement is a favorable result for the Settlement Class under the
16 circumstances presented.

17 10. On January 30, 2020, Plaintiff filed a putative class action complaint against Defendants
18 SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation (hereinafter collectively
19 referred to as “SmileDirect” or “Defendants”) in Los Angeles County Superior Court. On April 6, 2020,
20 Plaintiff filed a First Amended Class and Representative Action Complaint. On May 14, 2021, pursuant
21 to the Parties’ stipulation and in connection with effectuating the terms of the settlement, Plaintiff filed a
22 Second Amended Class and Representative Action Complaint (“SAC”) adding a cause of action for
23 Defendants’ failure to timely pay all wages upon separation of employment. In the SAC, Plaintiff alleges
24 that Defendants: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed;
25 (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally
26 required rest periods; (5) failed to timely pay all wages upon separation of employment; (6) failed to
27 provide accurate, itemized wage statements; (7) engaged in unlawful business practices; and (8) is liable
28 for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

1 11. As explained in detail in the Motion for Preliminary Approval, Plaintiff's primary theories
2 of liability are related to Defendant's alleged failure to pay for all time worked and failure to provide
3 Class Members all legally compliant duty-free meal and rest periods. Specifically, Plaintiff alleges that
4 Defendants failed to compensate its non-exempt employees for all time worked. Plaintiff alleges that
5 Defendants would keep track of Plaintiff's time worked and would unlawfully round/shave Plaintiff's
6 work time such that Plaintiff would not be fully paid for all time worked. This time-shaving and/or
7 rounding practice utilized by Defendants was not even-handed over time and would almost exclusively
8 round and shave in Defendants' favor such that Plaintiff was routinely underpaid for all his time worked.

9 12. Defendants contend that they compensated non-exempt employees for all of their time
10 worked and that the time punch data would necessarily include minutes that were not compensable work
11 time because the employee would not start performing any work prior to the start of the shift and/or
12 would not perform any work after the scheduled stop time. Defendants also contend that they only
13 rounded during a portion of the relevant time period and their rounding practices were lawful, Defendants
14 further contend any unpaid time was *de minimis* and therefore non-compensable. Defendants further
15 assert that Plaintiff would be unable to certify a rounding or off-the-clock claim given the individualized
16 inquiries that would be required, given that Defendants rounding mechanism was, according to
17 Defendants, allegedly favored the employees.

18 13. Plaintiff alleges that he and Settlement Class Members were not provided with all legally-
19 required off-duty meal periods beginning before the end of the fifth hour of work. Specifically,
20 Specifically, Plaintiff contends that due to his job duties, he was often prevented from taking meal periods
21 that commenced before the end of the fifth hour of work and/or a meal period altogether.

22 14. Defendants counter that they have always provided non-exempt employees with an
23 opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in
24 employee timekeeping records were solely the result of employee choice, rather than any policy or
25 practice of Defendants. Furthermore, Defendants counter that the time records reflect compliant meal
26 periods. Defendants point out that it is only required to "provide" the opportunity to take meal periods,
27 not "ensure" meal periods are taken, and that they have always done so. Finally, Defendants contend
28 Plaintiff's meal period claim is not suited for class certification, since individual inquiries would be

1 required to assess which employees took non-compliant meal periods, how many meal periods were non-
2 compliant or missed, and the reasons why a particular employee took a non-compliant meal period or
3 missed a meal period during a particular shift.

4 15. Plaintiff alleges that he and other Class Members were not authorized and permitted to
5 take all required rest periods due to Defendants' rest period policies/practices which fail to authorize and
6 permit all rest periods for every four hours worked, or *major fraction thereof*. Specifically, during the
7 shifts when Plaintiff worked alone, Defendants' policy and practice prohibited him from taking any rest
8 periods.

9 16. Defendants contend they have always maintained and enforced lawful rest period policies
10 and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
11 periods in compliance with California law. Defendants argue that their policy and practices was to
12 schedule two to three employees to work in any given shift. Therefore, Defendants argue Plaintiff's rest
13 period theory of liability is inherently unsuited for class treatment because it was uncommon for the
14 proposed Settlement Class Members to solely work alone during their shift. In addition, Defendants
15 argue this claim is inherently unsuited for class treatment as it requires an individualized inquiry into
16 whether each Settlement Class member was in fact authorized and permitted to take a compliant rest
17 period, which would devolve into an unmanageable series of mini-trials.

18 17. As a result of the alleged unpaid wages and unpaid meal and rest period premium wages
19 described above, Plaintiff alleges that Defendants issued inaccurate wage statements in violation of Labor
20 Code § 226.

21 18. Defendants argue that meal and rest period claims cannot support a claim for wage
22 statement penalties. Defendants further argue that their alleged wage statement violations could not be
23 shown to be "knowing and intentional," and that Plaintiff cannot show that he or any other employee
24 "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e)
25 for imposition of penalties..

26 19. Plaintiff alleges that as a result of the above, Defendants failed to pay all wages owed to
27 Settlement Class Members upon their separation of employment.

28 20. Defendants assert they have strong defenses to the waiting time claim because there exist

1 good-faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties.

2 21. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged
3 Labor Code violations.

4 22. Since Plaintiff's PAGA claim is a derivative claim based on the underlying claims,
5 Defendants argue that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims
6 will fail. Defendants also maintain that, given their good faith defenses, this Court would exercise its
7 discretion to substantially reduce any PAGA penalties if it were to find Defendants liable for any of
8 Plaintiff's claims.

9 23. These considerations, not only bore heavily on the negotiations leading to the Settlement,
10 but also confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of
11 further litigation. As detailed in the Preliminary Approval Motion, Plaintiff carefully vetted the claims
12 at issue and conducted a detailed liability analysis of class-wide data to calculate the damages figures.
13 Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair, adequate,
14 and reasonable in view of them.

15 24. After agreeing to participate in early mediation, Defendants informally produced time
16 records and payroll data for the putative class, as well as its wage and hour policies and other relevant
17 documents and information relevant to the claims alleged in advance of mediation. Plaintiff retained an
18 expert to conduct an analysis of the payroll data and time records produced by Defendants. After the
19 detailed review of the payroll and time records and other documents and policies produced by Defendants,
20 Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses
21 of Plaintiff's case. This discovery also allowed the Parties to discuss the strengths and weaknesses of
22 Plaintiff's contemplated waiting time penalty claim and Plaintiff's various theories of liability on his
23 claim. This discovery allowed the parties to assess the merits and value of Plaintiff's claims and
24 Defendants' defenses thereto, if a settlement could not be reached.

25 25. On November 10, 2020 after extensive research and analysis, including a detailed analysis
26 of Defendants' potential exposure by Plaintiff's retained expert who holds a Ph.D. in economics, a full-
27 day mediation was held with Jeffrey Krivis, Esq., a well-respected wage and hour class action mediator,
28 at First Mediation. During mediation, the parties vigorously debated their opposing legal positions, the

1 likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. As part
2 of the negotiations and settlement discussions, the Parties agreed that Plaintiff would file a SAC adding
3 causes of action against Defendants for waiting time penalties. After a full day mediation, the Parties
4 reached agreement and executed a Memorandum of Understanding ("MOU"). Thereafter, the Parties
5 cooperated and signed the Stipulation of Settlement ("Settlement").

6 26. Plaintiff submitted the Stipulation of Settlement to the Court with his Motion for
7 Preliminary Approval on March 2, 2021. On May 13, 2021, the Court issued its tentative ruling. On
8 June 16, 2021, Plaintiff filed the Parties' Amended Stipulation of Settlement and his supplemental
9 briefing in support of his Motion for Preliminary Approval addressing the issues identified in the Court's
10 tentative ruling. On August 2, 2021, the Court issued an Order Granting Preliminary Approval of the
11 Settlement. Attached hereto as **Exhibit A** is a true and correct copy of the Order Granting Preliminary
12 Approval.

13 27. The Settlement Class encompasses "all current and former non-exempt, hourly,
14 employees of Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation
15 who worked in California at any time from November 8, 2017 through August 2, 2021."

16 28. Funds remaining unclaimed will be transferred to the California State Controller's Office
17 – Unclaimed Property Fund in the name of the corresponding Settlement Class Member(s).

18 29. Moreover, in my experience in wage and hour class action matters similar to this one, fee
19 awards generally average around one-third of the gross recovery.

20 30. My law firm's and co-counsel's work on this case includes, but is not limited to:
21 conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing
22 Defendants' documents and policies, analyzing Settlement Class Members' timekeeping data and payroll
23 records, preparing for and attending mediation, negotiating and revising the long-form Settlement
24 Agreement, preparing the Amended Stipulation of Settlement, preparing the Motions for Preliminary and
25 Final Approval, overseeing the settlement administration process, communicating with Settlement Class
26 Members, and otherwise litigating this case.

27 31. Since undertaking representation of Plaintiff, Class Counsel has borne the costs of for
28 nearly two years without receiving any compensation to date. To date, my law firm and co-counsel's

1 firm, Haines Law Group, APC have incurred \$21,796.16 in actual costs and expect to incur additional
2 \$1,500.00 in future costs for filing the instant motion, filing the final declaration regarding distribution
3 of settlement, Case Anywhere fees for approximately four quarters following final approval until case
4 closure, service and messenger fees, postage fees, and/or court costs for future court appearances, for a
5 total of \$23,296.16 in costs. Attached hereto as **Exhibit B** is an Expense Summary reflecting these costs,
6 which include but are not limited to: filing fees, messenger fees, service fees, copying costs, mediation
7 fees, and postage.

8 32. My experience in matters similar to this one was integral in evaluating the strengths and
9 weaknesses of this case and the reasonableness of the Settlement. Practice in the narrow field of wage
10 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and
11 federal law, as well as the procedural law of class action litigation. This case involved legal issues
12 including questions surrounding Defendant's obligation to "provide" meal periods and "authorize and
13 permit" rest periods, and the propriety of statutory penalties, to name just a few.

14 33. Given the considerable potential for adverse outcomes in this case, including, but not
15 limited to losing on class certification and/or merits issues, the contingent risk borne by Class Counsel
16 was great. In addition to the legal and procedural challenges this lawsuit presented, there were also other
17 practical challenges. There was a real risk that my firm and co-counsel's firm would not be compensated
18 for our work, because our firms handled this matter on a purely contingent basis. Thus, Plaintiff was not
19 responsible for paying my firm's attorneys' fees and my firm could only recover attorneys' fees if
20 Plaintiff was successful. By the time I (or someone from my firm) attend the final approval hearing in
21 this matter, my firm and co-counsel firm will have litigated this case for well over one year with no
22 payment, all while bearing the risk of non-payment if Plaintiff was unsuccessful. Moreover, as discussed
23 above, Class Counsel has advanced a total of \$21,796.16 (and anticipate incurring an additional
24 \$1,500.00 in hard costs in connection with filing the motion for final approval and attending the hearing
25 on the motion for final approval and related tasks) for a total of \$23,296.16 in litigation costs on a
26 contingency basis, which also carried risk because Class Counsel would not recoup its costs in the event
27 Plaintiff did not prevail in this lawsuit.

28 34. In this case, Class Counsel have a lodestar of **\$173,414** which results in a multiplier of

approximately 1.249 compared to the \$216,666.66 fee request. The following is a general summary showing the number of hours of work performed by each attorney and paralegal in my firm and/or co-counsel's firm on this case:

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (23rd Year Attorney)	\$750	65.7	\$49,275
Elizabeth Nguyen (16th Year Attorney)	\$650	115.6	\$75,140
Paul K. Haines (15th Year Attorney)	\$650	17.6	\$11,440
Milan Moore (6th Year Attorney)	\$400	15.5	\$6,200
Romina Tamiry (2nd Year Attorney)	\$295	94.2	\$27,789
Paralegals	\$175	20.4	\$3,570
Total Lodestar			\$173,414

35. My proposed hourly rate of \$650, Mr. Lidman's proposed hourly rate of \$750, Mr. Haines' proposed hourly rate of \$650, Ms. Moore's proposed hourly rate of \$400, and Ms. Tamiry's proposed hourly rate of \$295 are reasonable in light of our respective skills, wage and hour class action litigation experience, reputation, and fee awards to other attorneys of similar experience in California. Moreover, our requested hourly rates and our co-counsel's requested hourly rates are in line with the *Laffey* Matrix, a true and correct copy of which is attached hereto as **Exhibit C**. Based on the *Laffey* Matrix, the hourly rate for a 23rd year attorney is \$914, the hourly rate for a 16th year attorney is \$759, the hourly rate for a 6th year attorney is \$465, and the hourly rate for a 2nd year attorney is \$378.

36. The attorneys' fee award requested is consistent with those routinely awarded by California superior courts. California superior courts frequently grant common fund awards of 33%. *See, e.g., Ochoa v. Haralambos Beverage Co.*, No. BC319588 (Super. Ct., Los Angeles County, Feb. 1, 2007) (33.3% fee award with no mention of lodestar crosscheck); *Jones v. Alliance Imaging, Inc.*, No. RG05210418 (Super. Ct., Alameda County, Nov. 27, 2006) (33% fee award with no mention of lodestar crosscheck); *Wisniewski v. Pacific Maritime Assoc.*, No. BC293134 (Super. Ct., Los Angeles County, Nov. 20, 2006) (30.7% fee award from \$12.9 million settlement with no mention of lodestar crosscheck); *Garcia v. Save Mart Supermarkets*, No. 312026 (Super. Ct., Stanislaus County, Aug. 3, 2004) (33% fee

award with no mention of lodestar crosscheck); *Terrell v. Ocean's 11 Casino, Inc.*, No. GIC795732 (Super. Ct., San Diego County, Feb. 10, 2004) (approving 33% fee award); *Big Lots Overtime Cases*, JCC Proceeding No. 4283, San Bernardino County Superior Court, Feb 4, 2004) (approving a 33% fee recovery); *Tokar v. GEICO*, (San Diego Superior Court, No. GIC 810166, July 9, 2004) (approving award of 33-1/3%); *Davis v. The Money Store, Inc.*, (San Diego County Superior Court, No. 99AS01716, December 26, 2000) (33-13% of the settlement)

37. Indeed, numerous courts have awarded attorneys' fees of up to, or in excess of 40% of the common fund. *Ammari Electronics, et al. v. Pacific Bell Directory*, Alameda County Sup. Ct., Case No. RG05198014 (awarded 43.8%) (2015); *In re California Indirect Purchaser X Ray Film Antitrust Litigation*, San Francisco Sup. Ct. 1998 (citing *Abzug v. Kerkorian*, Los Angeles Sup. Ct., Nov. 19, 1990, Case No. CA-00981 (45%) and *Haitz v. Meyer*, Alameda County Sup. Ct., August 20, 1990, Case No. 5729683 (45%)); *Hall v. Cinema 7, Inc.*, San Francisco Sup. Ct., July 16, 2008, Case No. CGC-01-409105 (53%); and *Rundberg v. Intrawest Napa Dev. Co.*, Napa County Sup. Ct., January 15, 2014, Case No. 26-56886 (40%).

38. Plaintiff has provided written approval of the split of attorneys' fees in this action: 46.5% to Haines Law Group, APC 31% to Lidman Law, APC, and 22.5% to the Michael Burgis & Associates, PC. Michael Burgis & Associates, PC is the referring attorney. Further, being a private law practice my firm can only properly litigate a limited number of cases at one time. The professional demands of this case were significant, including a significant number of hours of attorney and paralegal time. This litigation precluded my firm from other employment due to the time and financial commitments required by the case. Indeed, because my firm takes on cases on a purely contingency fee, we are only compensated for our time if we successfully settle a case or prevail at trial. Accordingly, I believe the requested fees are reasonable.

39. The requested service award to Plaintiff of \$5,000.00 is also reasonable. Plaintiff took on significant risks, including the risk that he could be liable for Defendants' costs if this case was unsuccessful. Plaintiff also was integral in the prosecution of this action, by, among other things, gathering documents for use in this lawsuit, providing factual information to my firm regarding his claims, and working with Class Counsel on the to prepare for mediation and discuss the case, the merits,

1 the defenses, and the settlement reached. Further, Plaintiff put his future employment prospects at risk
2 by becoming a named Plaintiff in a representative action since the lawsuit is public record and may become
3 known to prospective employers when evaluating her for employment. Additionally, Plaintiff agreed to
4 a general release and a 1542 waiver.

5 40. Plaintiff submitted the proposed Settlement Agreement on the California Labor &
6 Workforce Development Agency ("LWDA") via its website on March 2, 2021, the same day that he filed
7 the Motion for Preliminary Approval. A true and correct copy of the proof of service is attached hereto
8 as **Exhibit D**. On June 22, 2021, Plaintiff submitted the proposed Amended Settlement Agreement on the
9 LWDA via its website. A true and correct copy of the proof of service is attached hereto as **Exhibit E**.
10 On August 9, 2021, Plaintiff submitted a copy of the Order granting preliminary approval on the LWDA
11 via its website. A true and correct copy of the proof of service is attached hereto as **Exhibit F**.

12 41. As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to
13 Settlement Class members, the final judgment entered by the Court and any changes to the Final Approval
14 hearing date or location will be posted on the Settlement Administrator's website at
15 CalderonClassActionSettlement.com.

16 42. Pursuant to Labor Code § 2699(1)(2), Plaintiff is submitting a copy of the Motion for Final
17 Approval and all supporting documents via the LWDA's website on the same date that it is filing this
18 motion and will file a supplemental proof of service after the Motion for Final Approval and all supporting
19 documents are submitted to the LWDA.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is
21 true and correct. Executed on December 16, 2021, at El Segundo, California.

22 
23 Elizabeth Nguyen

EXHIBIT A

EXHIBIT A

AUG 02 2021

~~TENTATIVE~~ RULINGS/ORDERS

Sherri R. Carter, Executive Officer/Clerk of Court
By: A. Abramyan, Deputy

Francisco Calderon v. Smiledirectclub, LLC, et al., Case No.:
20STCV03799

The Parties' Motion for Preliminary Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable.

The essential terms are, among other things:

A. The Gross Settlement Amount ("GSA") is \$650,000. 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. (§13)

B. The Net Settlement Amount ("Net") \$363,583.34 is the GSA minus the following:

Up to \$216,666.66 (1/3) for attorney fees;
Up to \$35,000 for litigation costs;
Up to \$5,000 for a service award to the proposed class representative;
Up to \$7,250 for settlement administration costs;
\$22,500 (75% of \$30,000 PAGA penalty) to the LWDA; and

C. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by February 4, 2022. The parties must contact the Clerk in Department 9 to obtain a hearing date for their motion.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and the Parties must email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

~~14~~ 14 Nonappearance case management review is set for February 14, 2022, 8:30 a.m., Dept. 9.

I.
BACKGROUND

Plaintiff Francisco Calderon sues his former employer, Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation (collectively, "Defendants"), for alleged wage and hour violations. Defendants provide teeth straightening services and operate various locations known as SmileShops throughout California. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

On January 30, 2020, Plaintiff filed a putative class action complaint against Defendants in Los Angeles County Superior Court, alleging that Defendants: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to timely pay all wages upon separation of employment; and (7) engaged in unlawful business practices. On April 6, 2020, Plaintiff filed a First Amended Class and Representative Action Complaint adding a cause of action for civil penalties under the Labor Code Private Attorneys General Act ("PAGA").

On November 10, 2020, the parties attended mediation before Jeffrey Krivis, Esq. After a full day mediation, the Parties reached agreement and executed a Memorandum of Understanding. Thereafter, the Parties signed the Stipulation of Settlement ("Settlement Agreement"), a copy of which was filed with the Court.

Pursuant to the terms of the Settlement, subject to Court approval, the Parties stipulated to allow Plaintiff to file a Second Amended Complaint Class and Representative Action Complaint adding a cause of action for Defendants' failure to

timely pay all wages upon separation of employment. Plaintiff filed the Second Amended Complaint on May 19, 2021.

On June 16, 2021, the parties filed supplemental briefing to address issues raised by the Court, including the Amended Settlement Agreement attached to the Supplemental Declaration of Elizabeth Nguyen ("Nguyen Decl.") as Exhibit 2.

Now before the Court is Plaintiff's motion for preliminary approval of the settlement agreement.

II. SETTLEMENT AGREEMENT

A. Definitions

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. (¶1)

Class Period: November 8, 2017 through the date of preliminary approval. (¶1)

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. (¶2)

PAGA Period and release under PAGA: January 30, 2019 through the date of preliminary approval. (¶2)

The parties stipulate to class certification for settlement purposes only. (¶1)

B. Terms of Settlement Agreement

The essential terms are as follows:

- The Gross Settlement Amount ("GSA") is \$650,000, non-reversionary. (¶6)
 - o 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. (¶13)

- The Net Settlement Amount ("Net") (\$363,583.34) is the GSA minus the following:
 - o Up to \$216,666.66 (1/3) for attorney fees (¶6.D.4);
 - o Up to \$35,000 for litigation costs (Ibid.);
 - o Up to \$5,000 as a Service Award to the class representative (¶6.D.3);
 - o Up to \$7,250 for settlement administration costs (¶6.D.2);and
 - o Payment of \$22,500 (75% of \$30,000 PAGA penalty) to the LWDA (¶6.D.5).
- Defendants' share of payroll taxes shall be paid by Defendants separately from, and in addition to, the Gross Settlement Amount. (¶6.E)
- No Claim Form. Class Members are not required to submit a claim form to receive their individual settlement payment. (¶7)
- Response Deadline. The "Response Deadline" will be sixty (60) calendar days of the date of the initial mailing of the Notice Packets, applying to the submission of Requests for Exclusion (¶12.D), written objections (¶12.E), and workweek disputes (¶12.F).
 - o 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. (¶15)
- Individual Settlement Share Calculation. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Settlement Award based on the following formula: (¶7.B)
 - o 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. (§7.B.i)

- o 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. (§7.B.ii)

- o 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. (§7.B.iii)

- o Tax Allocation. Each individual settlement payment will be allocated as 33% to wages, 67% to interest and penalties. (§7.C)

- Funding of Settlement. Defendants agree to deposit the Gross Settlement Amount with the Settlement Administrator within thirty (30) calendar days after the "Effective Date" which is defined as the latter of: (a) the expiration of any appeal period following the Court's final approval of the Settlement (at or following the Final Approval Hearing) and entry of a Final Judgment and Order Approving Settlement in the same or substantially the same form as Exhibit C ("Judgment"); or (b) the final resolution of any appeal that has been filed, with the California Court of Appeal or the California Supreme Court rendering a final judgment affirming the Court's final approval of the Settlement without material modification. (§6.B)

- Uncashed Checks. 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. (§7.E)

- Phoenix Settlement Administrators will perform notice and settlement administration. (§6.A)
- The Settlement Agreement was submitted to the LWDA on March 2, 2021. (Supp. Proof of Service Re: Motion for Preliminary Approval)
- Notice of Entry of Judgment will be provided to class members in writing by mail with the Settlement Award. (§16.C)
- Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

III. DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On November 10, 2020, the parties attended mediation before Jeffrey Krivis, Esq. After a full day mediation, the Parties reached agreement and executed a Memorandum of Understanding, and thereafter, signed the Settlement Agreement. (Declaration of Elizabeth Nguyen ¶12.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represents that after agreeing to participate in early mediation, Defendants informally produced time records and payroll data for the putative class, as well as its wage and hour policies and other documents and information relevant to the claims alleged in advance of mediation. Plaintiff retained an expert to conduct an analysis of the payroll data and time records produced by Defendants. (Id. at ¶11.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶¶ 6-8; Declaration of Paul K. Haines ¶¶ 6-7.)

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 14:139.18, ["Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing."].)

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Class Counsel has provided information, summarized below, regarding the factual basis for, and estimated maximum exposure for each of the claims alleged.

Violation	Maximum Exposure	Realistic Exposure
Unpaid Wages	\$11,065.00	\$9,986.16
Meal Period Claim	\$181,722.50	\$155,372.74
Rest Period Claim	\$1,024,235.00	\$696,479.80
Wage Statement Violations	\$200,150.00	\$162,121.50
Waiting Time Penalties	\$1,041,835.00	\$708,447.80
PAGA Penalties	\$201,300.00	\$163,053.00
Total	\$2,660,307.50	\$1,895,461.00

(Nguyen Decl. ¶¶ 16-28.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.").)

4. Amount offered in settlement. Plaintiff's counsel obtained a \$650,000 non-reversionary settlement, which represents approximately 24.4% of Defendant's maximum potential damages and 34.3% of Defendant's realistic potential damages, which, given the uncertain outcomes, and Defendant's financial condition, is within the "ballpark of reasonableness."

The \$650,000 settlement amount, after reduced by the requested deductions, leaves approximately \$363,583.34 to be divided among approximately 277 putative class members. Assuming full participation, the resulting payments will average approximately \$1,312.58 per class member. [$\$363,583.34 / 277 = \$1,312.58$]

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the fairness hearing.

The Court concludes that the settlement can be preliminarily deemed "fair, adequate, and reasonable."

C. Scope of the Release

1. 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:
(¶4)

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. (§4.A)

The time period for the release of the Released Claims against the Released Parties shall be the same time period as the Class Period. (§4.B)

2. 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"). (§4.C)

Class Members who submit a Request for Exclusion will still receive a proportionate share of the PAGA Payment regardless of whether they exclude themselves from the Settlement if they are PAGA Employees. (Notice pg. 4)

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 shall have, released, waived and relinquished the Released Claims. (§4.D)

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. (§4.E)

The releases identified herein shall be null and void if the Settlement is not fully funded. (§4.H)

3. Individual Release: Named Plaintiff will additionally provide a general release and §1542 waiver. (§§ 4.F, 4.G)

D. May Conditional Class Certification Be Granted?

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (Amchem Products, Inc. v. Winsor (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (Dunk at 1807, fn 19.) Finally, the Court is under no "ironclad requirement" to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 240, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.)

1. Numerosity. There are approximately 277 Class Members. (Motion at 4:26-27). This element is met.

2. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.) All Class Members are identifiable through a review of Defendant's employment records. (Motion at 5:3-8).

3. Community of interest. "The community of interest requirement involves three factors: '(1) predominant common questions of law or fact; (2) class representatives with claims

or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435.)

Regarding commonality, Plaintiff contends that Settlement Class Members' claims arise from Defendants' common, uniform policies and practices that applied to Plaintiff and Settlement Class Members during the class period. As a result, Plaintiff contends that their claims involve common questions of law and fact, including but not limited to:

1. Whether Defendants properly paid all overtime wages;
2. Whether Defendants properly paid all minimum wages;
3. Whether Defendants provided all legally compliant meal periods;
4. Whether Defendants authorized and permitted all legally required rest periods;
5. Whether Defendants failed to furnish accurate, itemized wage statements;
6. Whether Defendants failed to timely pay all wages owed upon separation; and
7. Whether Defendants' conduct constituted unlawful and/or unfair business practices. (Motion at 5:13-6:3.)

Regarding typicality, Plaintiff contends that his claims are typical of those held by the members of the proposed Settlement Class. First, Plaintiff was employed by Defendants during the Class Period as a non-exempt employee and was subject to Defendants' wage and hour policies at issue in this case. Second, Plaintiff alleges that he was injured by the same challenged policies that injured the Settlement Class as a whole. For example, Plaintiff asserts that he, like the members of the Classes, was not provided with all required meal periods, was not provided all legally required minimum wages and overtime wages, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when he was not provided compliant meal or rest periods, was not provided with accurate, itemized wage statements, and was not paid all of his wages owed upon separation of employment. Given that Defendants' policies and practices applied to all non-exempt employees, Settlement Class Members possess a similar interest and have suffered similar alleged injuries as Plaintiff. (Motion at 6:9-21.)

Finally, as to adequacy, Plaintiff represents that he understands the risks and burden of serving as Class Representative, has been actively involved in the case since

joining the lawsuit, and has no conflicts with any of the other Settlement Class members. (Declaration of Francisco Calderon ¶¶ 8-12.)

4. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including wage and hour class actions.

5. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

The Court finds that the class may be conditionally certified because the prerequisites of class certification have been satisfied.

E. Is the Notice Proper?

1. Content of class notice. A copy of the proposed notice to class members is attached to the Settlement Agreement as Exhibit B. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; the proposed deductions from the gross settlement amount (attorney fees and costs, enhancement awards, and claims administration costs); the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

The Notice will be sent in English only (¶12.B), as Plaintiff asserts that Defendants employed Plaintiff and the Settlement Class in a retail setting that required the Settlement Class to be able to read and write in English. As such, the Parties believe that Defendants' workforce possesses sufficient English language skills and that it is unnecessary to mail the proposed Notice Packets in any other languages. (Motion at 20:18-25.)

2. Method of class notice. Within twenty (20) calendar days after entry of an order preliminarily approving this Agreement, Defendants will provide the Settlement Administrator with the Class Data. (¶12.A) 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. (¶12.B) Notice Packets shall be mailed to all Settlement Class Members 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. (¶12.C)

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. (¶12.G)

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$7,250. Prior to the time of the final fairness hearing, the claims administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

//

F. Attorney Fees and Costs

CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-1096; Ramos v. Countrywide Home Loans, Inc. (2000) 82 Cal.App.4th 615, 625-626; Ketchum III v. Moses (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to \$216,666.66 (1/3) in attorney fees will be addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method, and must indicate what multiplier (if applicable) is being sought as to each counsel. There is a fee split. Class Counsel represents that Plaintiff has provided written approval of the split of attorneys' fees in this action: 46.5% to Haines Law Group, APC, 31% to Lidman Law, APC, and 22.5% to the Michael Burgis & Associates, PC. Michael Burgis & Associates, PC is the referring attorney. (Nguyen Decl. ISO Prelim ¶30.)

Class Counsel must also be prepared to justify the costs sought (capped at \$35,000) by detailing how they were incurred.

G. Incentive Award to Class Representative

The Settlement Agreement provides for an enhancement award of up to \$5,000 for the class representative, Francisco Calderon (¶6.D.3). In connection with the final fairness hearing, the named Plaintiff must submit a declaration attesting to why he should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why he "should be compensated for the expense or risk she has incurred in conferring a benefit on other members of the class." (Clark v.

American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than pro forma claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit'" (Id. at 806-807, italics and ellipsis in original.)

The Court will decide the issue of the enhancement award at the time of final approval.

IV. CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Preliminary Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable.

2) The essential terms are, among other things:

A. The Gross Settlement Amount ("GSA") is \$650,000. 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. (§13)

B. The Net Settlement Amount ("Net") \$363,583.34 is the GSA minus the following:

Up to \$216,666.66 (1/3) for attorney fees;
Up to \$35,000 for litigation costs;

Up to \$5,000 for a service award to the proposed class representative;

Up to \$7,250 for settlement administration costs;

\$22,500 (75% of \$30,000 PAGA penalty) to the LWDA; and

C. Plaintiffs release of Defendants from claims described herein.

3) The Parties' Motion for Final Approval of Class Action Settlement must be filed by February 4, 2022. The parties must contact the Clerk in Department 9 to obtain a hearing date for their motion.

4) The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and the Parties must email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

5) Nonappearance case management review is set for February 14, 2022, 8:30 a.m., Dept. 9.

CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

DATED: July 29, 2021



YVETTE M. PALAZUELOS

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

0000000000

EXHIBIT B

EXHIBIT B

Expense Summary
Francisco Calderon v. SmileDirectClub, LLC, et al.

EXPENSE	AMOUNT
Mediation Costs (including Plaintiff's portion of mediator expenses)	\$7,500.00
Filing, Service, Case Anywhere, and Messenger Fees	\$4,267.68
Copying Costs	\$313.25
Postage Costs	\$69.23
Expert Expenses	\$9,646.00
Anticipated Costs for filing the Final Approval motion, court appearances, four quarterly Case Anywhere fees for Class Counsel through the date the final distribution declaration is filed, service fees, copying and postage	\$1,500.00
TOTAL:	\$23,296.16

EXHIBIT C

EXHIBIT C

LAFFEY MATRIX

[History](#)
[Case Law](#)
[Expert Opinions](#)
[See the Matrix](#)
[Contact us](#)
[Home](#)
[Links](#)

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406

6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *McDowell v. District of Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); *Salazar v. Dist. of Col.*, 123 F.Supp.2d 8 (D.D.C. 2000).

* "Years Out of Law School" is calculated from June 1 of each year, when most law students graduate. "1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). "4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier "1-3" from June 1, 1996 until May 31, 1999, would move into tier "4-7" on June 1, 1999, and tier "8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT D

EXHIBIT D

COPY

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

APR 07 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By: Cristina Grijalva, Deputy

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Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
FRANCISCO CALDERON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

vs.

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

Defendants.

Case No.: 20STCV03799

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

**SUPPLEMENTAL PROOF OF SERVICE
RE PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

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

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

RECEIVED
APR 07 2021
FILING WINDOW

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 150, El Segundo, California 90245.

On March 2, 2021 I served the foregoing document(s) described as:

1. STIPULATION OF SETTLEMENT
2. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF
3. DECLARATION OF ELIZABETH NGUYEN IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
4. DECLARATION OF SCOTT M. LIDMAN IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
5. DECLARATION OF MILAN MOORE IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
6. DECLARATION OF ROMINA TAMIRY IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
7. DECLARATION OF PAUL K. HAINES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
8. DECLARATION OF PLAINTIFF FRANCISCO CALDERON IN SUPPORT OF MOTION FOR APPROVAL OF CLASS ACTION SETTLEMENT
9. DECLARATION OF JODEY LAWRENCE OF PHOENIX CLASS ACTION ADMINISTRATION SOLUTIONS IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL
10. [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CLASS REPRESENTATIVE'S SERVICE AWARD, AND ATTORNEYS' FEES AND COSTS

on the interested party(ies) in this action as follows:

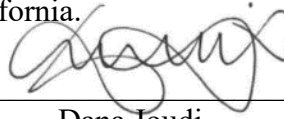
Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

(BY ELECTRONIC TRANSMISSION) I caused a true and correct copy of the document(s) described above to be electronically transmitted to the Labor and Workforce Development Agency

1 (“LWDA”) by uploading them to the LWDA’s online system, under LWDA Case No. LWDA-
2 CM-769846-20.

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

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



6 Dana Joudi

Dana Joudi

From: FormAssembly <no-reply@formassembly.com> on behalf of DIR PAGA Unit
<lwdadonotreply@dir.ca.gov>
Sent: Tuesday, March 2, 2021 5:12 PM
To: Dana Joudi
Subject: Thank you for your Proposed Settlement Submission

03/02/2021 05:11:34 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm



State of California
Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

Proposed Settlement of PAGA case

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".

[Search for PAGA Case number](#)

The timing of the deposit of settlement checks is governed by the provisions of the State Administrative Manual. This ministerial, administrative act of depositing a settlement check mandated by state procedures should not be construed as nor does it constitute an unconditional, voluntary and/or absolute acceptance of settlement proceeds or approval of the terms of any settlement agreement or judgment related to that check.

Your Information (Person Who is Filing)

Your First Name *

Your Last Name *

Your Email Address *

Your Street Name, Number and Suite/Apt *

Your Mobile Phone Number

Your City *

Your Work Phone Number

Your State *

Your Zip/Postal Code *

Court and Hearing Information

Court *

Court Case Number *

Hearing Date (if any)

Hearing Time

Hearing Location

Number of aggrieved employees *

Gross settlement amount *

650000

Gross penalty amount *

30000

Penalties to LWDA *

22500

Date of proposed settlement *

02/26/2021

Proposed Settlement and Other Documents

Proposed Settlement *

 2021-03-02 Sm... tables).pdf

Other Attachment (if any)

 2021-03-02 S...A Motion.pdf

Other Attachment (if any)

[Remove](#) 2021-03-02 S...A Motion.pdf

Other Attachment (if any)

[Remove](#) 2021-03-02 S...A Motion.pdf

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Other Attachment (if any)

[Remove](#) 2021-03-02 S...A Motion.pdf

Other Attachment (if any)

[Remove](#) 2021-03-02 Sm... client).pdf

Other Attachment (if any)

[Remove](#) 2021-03-02 S...- signed.pdf

Other Attachment (if any)

[Remove](#) 2021-03-02 S...A Motion.pdf

Other Attachment (if any)

[Remove](#) 2021-03-02 Su...tal POS.pdf[Add Another Attachment](#)Should you have questions regarding this online form, please contact PAGInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

EXHIBIT E

EXHIBIT E

ORIGINAL

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Milan Moore (SBN 308095)
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Attorneys for Plaintiff
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Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
FRANCISCO CALDERON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FAXED

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]*

SUPPLEMENTAL PROOF OF SERVICE

Date: August 4, 2021

Time: 10:00 a.m.

Dept.: SSC-9

Complaint Filed: January 30, 2020

Trial Date: None Set

RECEIVED
JUN 23 2021
Filing Window

FILED
Superior Court of California
County of Los Angeles

JUN 23 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By C. Grijalva Deputy
Cristina Grijalva

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On June 22, 2021, I served the foregoing document(s) described as:

- 1. AMENDED STIPULATION OF SETTLEMENT**
- 2. PLAINTIFF’S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 3. SUPPLEMENTAL DECLARATION OF ELIZABETH NGUYEN IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 4. [AMENDED PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CLASS REPRESENTATIVE’S SERVICE AWARD, AND ATTORNEYS’ FEES AND COSTS**

Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

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

ornia.

Dana Joudi

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [Dana Joudi](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Tuesday, June 22, 2021 10:47:08 AM

06/22/2021 10:46:50 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm



Private Attorneys General Act (PAGA) – Filing

Proposed Settlement of PAGA case

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".

[Search for PAGA Case number](#)

The timing of the deposit of settlement checks is governed by the provisions of the State Administrative Manual. This ministerial, administrative act of depositing a settlement check mandated by state procedures should not be construed as nor does it constitute an unconditional, voluntary and/or absolute acceptance of settlement proceeds or approval of the terms of any settlement agreement or judgment related to that check.

Your Information (Person Who is Filing)

Your First Name *

Your Last Name *

Your Email Address *

Your Street Name, Number and Suite/Apt *

Your Mobile Phone Number

Your City *

Your Work Phone Number

Your State *

Your Zip/Postal Code *

Court and Hearing Information

Court *

Court Case Number *

Hearing Date (if any)

Hearing Time

Hearing Location

Number of aggrieved employees *

Gross settlement amount *

650000

Gross penalty amount *

30000

Penalties to LWDA *

22500

Date of proposed settlement *

06/03/2021

Proposed Settlement and Other Documents

Proposed Settlement *

2021-06-03 S... to LWDA.pdf

Other Attachment (if any)

2021-06-16 Sm...n (final).pdf

Other Attachment (if any)

[Remove](#)

2021-06-16 S... scanned.pdf

Other Attachment (if any)

[Remove](#)

2021-06-16 Sm...e (final).pdf

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

EXHIBIT F

EXHIBIT F

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Fax: (424) 322-4775

Attorneys for Plaintiff
FRANCISCO CALDERON

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phaines@haineslawgroup.com
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El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
FRANCISCO CALDERON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

vs.

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

Defendants.

Case No.: 20STCV03799

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

**PROOF OF SERVICE RE: ORDER
GRANTING PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

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

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 150, El Segundo, California 90245.

On August 9, 2021, I served the foregoing document(s) described as:

ORDER GRANTING PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

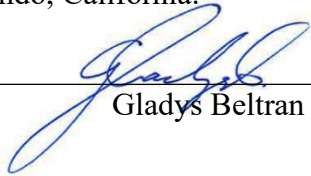
on the interested party(ies) in this action as follows:

Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

(BY ELECTRONIC TRANSMISSION) I caused a true and correct copy of the document(s) described above to be electronically transmitted to the Labor and Workforce Development Agency (“LWDA”) by uploading them to the LWDA’s online system, under LWDA Case No. LWDA-CM-769846-20.

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

Executed on December 16, 2021, at El Segundo, California.



Gladys Beltran

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [Gladys Beltran](#)
Subject: Thank you for your Court Order or Judgment Submission
Date: Tuesday, August 10, 2021 10:31:03 AM

08/10/2021 10:30:52 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Order or Judgment

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm



State of California
Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

Court Order or Judgment in PAGA case

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".

[Search for PAGA Case number](#)

Your Information (Person Who is Filing)

Your First Name *

Scott

Your Last Name *

Lidman

Your Email Address *

gbeltran@lidmanlaw.com

Your Street Name, Number and Suite/Apt *

2155 Campus Drive, Suite

Your Mobile Phone Number

4243224772

Your City *

El Segundo

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

90245

Court Case Name and Plaintiff Information

Court Case Name

Francisco Calderon v Smile

Plaintiff Name

Francisco Calderon

Order or Judgment Details

Gross settlement amount *

650000

Gross penalties *

30000

Penalties to LWDA *

22500

Fee award *

216666.66

Court Order, Judgment File and Other Files

Court Order or Judgment *

 2021-08-02 O...nting PA.pdf

Other Attachment

 No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.