

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
Romina Tamiry (SBN 328420)
rtamiry@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
FRANCISCO CALDERON

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
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]*

**DECLARATION OF PLAINTIFF
FRANCISCO CALDERON IN SUPPORT
OF MOTION FOR APPROVAL OF CLASS
ACTION SETTLEMENT**

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

Action Filed: January 30, 2020
Trial Date: None

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

I, FRANCISCO CALDERON, declare as follows:

1. I am an individual over the age of 18 and the named plaintiff in this matter. This declaration is submitted in support of approval of the proposed class action settlement (“Settlement”) reached in this case. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I was employed by Defendants SmileDirectClub, LLC, and Jeffrey Sulitzer, D.M.D., Professional Corporation (hereinafter collectively referred to as “SmileDirect” or “Defendants”) as a non-exempt employee from approximately March 2019 through approximately January 2, 2020. During my employment with SmileDirect, I worked inside the CVS Pharmacy in Woodland Hills, California as a Smile Guide and performed various duties including without limitation, explaining the products and guiding customers through timelines and payment plans. Also, during my employment with Defendants, I, along with the other hourly employees, were required to follow Defendants’ wage and hour policies and practices.

3. I am informed and believe, and on that basis state, that throughout my employment with SmileDirect, I was not paid for all my time worked. Specifically, SmileDirect would keep track of my time worked and would unlawfully round/shave my work time. SmileDirect's time-shaving and/or rounding practice was not even-handed over time and would almost always exclusively round and shave in SmileDirect's favor such that I would not be fully paid for all time worked. As such, I do not believe I was compensated for all required minimum and overtime wages owed.

4. I also do not believe I received all meal and rest breaks to which I was entitled to. Specifically, as a result of the work assigned to me by SmileDirect, I do not believe I was provided with all my legally required meal breaks. Additionally, due to the work assigned to me by SmileDirect, I believe I was not authorized and permitted to take all my legally required rest breaks. Specifically, during the shifts when I worked alone, SmileDirect's timekeeping policies did not allow me to take any rest periods at all. Despite all of this, I was not paid meal period or rest period premiums.

5. Additionally, SmileDirect paid me bonuses based on my sales for the month identified as “CO LOOKBACK” and/or “Smile Shop BON” on my wage statements, but SmileDirect did not list

1 my pay rate and hours on my wage statements. Because of all of the above issues at work, I do not
2 believe I received accurate, itemized wage statements.

3 6. Upon separation of my employment with SmileDirect, SmileDirect paid my wages on
4 an ATM card, even though I did not agree to be paid my wages via an ATM card. As a result, I also do
5 not believe I was paid all my wages upon my separation of employment with SmileDirect because I
6 could not access all of my wages. I believe there is still a balance of approximately less than \$20 on the
7 ATM card, which I was unable to access because I could only withdraw money in \$20 increments.

8 7. I have worked closely with my lawyers on this case. I answered all of their questions
9 about my employment and made myself available whenever I was needed, including the entire day of
10 the mediation on November 10, 2020.

11 8. At the time of filing this lawsuit, I understood that this lawsuit had the chance to benefit
12 my former co-workers and current employees of SmileDirect by helping them recover money owed to
13 them. As the named Plaintiff, I knew that I would be taking on certain risks that the other employees
14 would not have to take on. I also knew that there was a risk that I could be liable for SmileDirect's
15 costs if we lost the case. I was also scared that it would be difficult for me to get a similar job in the
16 future because other companies might not want to hire me if they knew I had filed a lawsuit against my
17 former employer. Even though I understood that joining a lawsuit is a public record and could
18 stigmatize me and may affect my future employability, I accepted that burden for the benefit of other
19 employees of SmileDirect because I wanted SmileDirect to pay its current and former employees for all
20 unpaid wages according to the law and face consequences for not doing so.

21 9. I was also afraid that future employers would be hesitant to hire me because SmileDirect
22 is such a big name in the dental industry. Over the past year, I have been on several interviews and
23 have worked on some temporary jobs in the dental and orthodontic industry and I am always asked
24 about my employment with SmileDirect from those employers. Since SmileDirect is such a well-known
25 company, I have been nervous to tell other employers that my employment with SmileDirect was
26 separated. This has been very hard for me during the time of COVID and I still have not been able to
27 find a job in this industry. I believe it will be even harder for me to get a job in this field once other
28 employers know that I filed a lawsuit against SmileDirect.

1 10. I have been actively involved in this case since joining this lawsuit. Among other things,
2 I gathered various employment and non-employment related documents for use in the lawsuit. Without
3 revealing and/or waiving attorney-client privileged communications, I have communicated with my
4 attorneys on numerous occasions. In connection with the settlement in this case, I spent time reviewing
5 the settlement agreement and discussing them with my attorneys. I wanted to understand everything
6 before I signed them. I estimate that I have spent approximately 15 hours on activities related to this
7 case.

8 11. As part of the proposed Settlement, I have also agreed to a full general release of claims
9 related to my employment with Defendants that extends beyond the release of claims applicable to
10 members of the Settlement Class. I understand that this includes all claims, whether known or
11 unknown, under federal, state, or local law against SmileDirect.

12 12. I believe my claims are typical of the members of the Settlement Class because they
13 were required to follow the same policies and procedures I was required to follow when I worked at
14 SmileDirect. I believe SmileDirect's policies and procedures were the same for all hourly employees
15 in California. Since the same policies and procedures applies to myself and the other Settlement Class
16 members, I believe they were not paid for all wages earned, did not receive all meal and rest periods,
17 and did not receive all final wages due. As far as I am aware, I have no conflicts with any of the other
18 Settlement Class members. I understand that as the proposed class representative, I am responsible for
19 representing the interests of all members of the class in litigation to recover money damages for the
20 Settlement Class and I consider the interests of the Settlement Class and put the interests of the
21 Settlement Class before my own interests.

22 //

23 //

24 //

25 //

26 //

27 //

28 //

13. I understand that my attorneys will request that the Court award me Service Award of \$5,000.00 for my service and efforts on the case. This proposed \$5,000.00 Service Award is not contingent upon me supporting the proposed Settlement.

I have reviewed this written statement and fully understand all of its contents. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February Feb 26, 2021 at Chatsworth, California.

Francisco J Calderon
Francisco J Calderon (Feb 26, 2021 13:09 PST)

FRANCISCO CALDERON