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himself and others similarly situated
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**
10

11 HERBERT HURTADO, on behalf of himself
and others similarly situated,

12
13 Plaintiff,

14
15 v.
16

17 J. MCCULLOUGH CORP. dba OREMOR
AUTOMOTIVE GROUP, a California
18 corporation; OREMOR OF FRESNO, INC.
dba FRESNO LEXUS, a California
19 corporation; OREMOR OF GLENDALE LLC
dba TOYOTA OF GLENDALE, a California
20 company; OREMOR OF RIVERSIDE, LLC
dba BMW OF RIVERSIDE, a California
21 company; OREMOR OF RIVERSIDE II, LLC
dba INFINITI OF RIVERSIDE, a California
22 company; OREMOR OF RIVERSIDE RC,
23 LLC dba RIVERSIDE CHEVROLET, a
California company; OREMOR OF
24 TEMECULA, LLC dba TEMECULA
VALLEY TOYOTA, a California company;
25 OREMOR OF TUSTIN, INC. dba TUSTIN
TOYOTA, a California corporation;
26 OREMOR EUROPEAN, LLC dba
27 MERCEDES BENZ OF EL CAJON, a
California company; UNITED RECOVERY,
28 INC., a California corporation; OREMOR OF

Case No.: CIVDS2006540

[Assigned for all purposes to Hon. David
Cohn; Dept. S26]

CLASS ACTION

**DECLARATION OF ANTHONY J.
ORSHANSKY IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Preliminary Approval Hearing

Date: August 14, 2020
Time: 10:00 a.m.
Dept.: S26

1 ITALY, INC. dba FIAT OF ONTARIO, a
2 California corporation; OREMOR OF ITALY
3 II, LLC dba MASERATI & ALFA ROMEO
4 OF ONTARIO, a California company;
5 OREMOR OF WOODLAND HILLS LLC dba
6 LEXUS OF WOODLAND HILLS, a
7 California company; ACQUIRECORP'S
8 NORWALK AUTO AUCTION dba
9 NORWALK AUTO AUCTION, a California
10 corporation; JEEP CHRYSLER OF
11 ONTARIO, INC. dba JEEP CHRYSLER
12 DODGE RAM FIAT, DODGE OF
13 ONTARIO, a California corporation;
14 ROMERO MOTORS CORPORATION dba
15 ONTARIO HYUNDAI MAZDA, a California
16 corporation; EMPIRE NISSAN, INC., a
17 California corporation; and DOES 1 through
18 100,

Defendants.

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5. This amount shall be inclusive of all settlement payments to Settlement Class Members, the enhancement award to the Class Representative, the costs to the Settlement Administrator, CPT Group, Inc., the attorneys' fees and costs to Class Counsel, and payment to the California Labor and Workforce Development Agency ("LWDA") for civil penalties pursuant to statute.

- Up to 33-1/3 percent of the Settlement Amount in attorneys' fees to Class Counsel;
- Up to \$15,000 in litigation costs to Class Counsel;
- Up to \$10,000 to the Class Representative as an enhancement and in exchange for a general release of claims;
- \$30,000 – which is 75% of the \$40,000 allocated – to the LWDA for civil penalties pursuant to statute; and
- Up to \$25,000 to the Settlement Administrator to notify Settlement Class Members and administer the settlement.

The amount remaining after the foregoing deductions, approximately \$1,120,000, is called the “Net Settlement Amount.” The entire Net Settlement Amount must be paid out to Settlement Class Members. Payments to the Settlement Class will be determined on a claims-made basis

1 for former employees and will be automatically paid to all current employees who do not request
2 exclusion and ***without the need to submit claim forms.***

3 7. A participating Settlement Class Member may receive a proportional share of the
4 Net Settlement Amount based on his or her eligible workweeks. Each Net Settlement Payment
5 will be determined by dividing the Net Settlement Amount by the total number of eligible
6 workweeks worked by all Settlement Class Members during the Settlement Period (the “Weekly
7 Amount”) and then multiplying the Weekly Amount by the number of eligible workweeks of the
8 individual Settlement Class Member as determined by the Settlement Administrator, less any
9 applicable withholding taxes based on the Parties’ stipulated allocation of the Net Settlement
10 Amount. If Settlement Class Members claim less than the Net Settlement Amount, then the
11 difference between the claimed amount and the Net Settlement Amount shall be distributed on a
12 *pro rata* basis to such participating Settlement Class Members. As a result, the consideration
13 paid to each Settlement Class Member is tailored to the impact of Oremor Automotive’s alleged
14 violations as well as the claims he or she is releasing if he or she does not opt out of the settlement.

15 8. If all of the approximately 2,109 Settlement Class Members participate in the
16 settlement and assuming hypothetically that distribution was on an individual *pro rata* basis, then
17 the Net Settlement Payment would be an estimated \$531.06 per Settlement Class Member. Of
18 course, any Settlement Class Member who prefers to preserve his or her right to pursue relief or
19 seek an alternative recovery may opt out.

20 9. As part of the settlement, Plaintiff will apply for an enhancement payment at the
21 time of seeking final approval of the settlement in the amount of \$10,000 for his services to the
22 Settlement Class and a general release of all claims against Oremor Automotive. Plaintiff’s
23 requested enhancement payment is intended to recognize the significant benefits conferred upon
24 the Settlement Class due to the time and effort that Plaintiff expended on behalf of the Settlement
25 Class, including providing factual information and documents to Class Counsel, identifying
26 potential witnesses, reviewing documents, discussing the claims and theories at issue in the case
27 with Class Counsel, participating in mediation, as well as the significant risks Plaintiff undertook
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1 by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff agreed to a
2 general release of all claims subject to a waiver of Civil Code section 1542.

3 10. Class Counsel will apply for an attorneys' fees award of 33-1/3 percent of the
4 Settlement Amount, and up to \$15,000 in costs. Plaintiff submits that the requested fee is fair
5 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
6 purely contingent fee basis. Class Counsel have incurred substantial attorneys' fees conducting
7 pre-filing investigation, analyzing Plaintiff's claims, conducting legal research and analysis,
8 conducting discovery, meeting and conferring in-person and telephonically with defense counsel;
9 interviewing putative class members, reviewing documents produced by Defendants, including
10 corporate policies, employee time and payroll records, building damages models, preparing for
11 and attending mediation, routine case updates and consultations with client, negotiating and
12 preparing the long-form Settlement Agreement, and preparing this motion for preliminary
13 approval and supporting documents.

14 11. Class Counsel will also expend future attorney time in attending the hearing on
15 this Motion, overseeing the class notice and administration process, drafting the Final Approval
16 Motion and supporting documents, and attending the Final Approval hearing, among other tasks,
17 such as addressing questions from Settlement Class Members.

18 12. Class Counsel submit that their request for attorneys' fees is reasonable when
19 viewed as an overall percentage of the settlement in light of the substantial risks and significant
20 work undertaken, the results obtained for the Settlement Class, and the efficiency with which the
21 Parties have conducted the litigation. Assuming that the Court grants preliminary approval, Class
22 Counsel will seek an award of attorneys' fees and litigation costs at the time of seeking final
23 approval of the settlement.

24 13. This settlement is fair, reasonable, and adequate and should be approved pursuant
25 to California law. *See, Clark v. American Residential Services, LLC* (2009) 175 Cal. App. 4th
26 785 (hereinafter, "*Clark*") and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116
27 (hereinafter, "*Kullar*"). After discussing these decisions, I will apply the pertinent factors to the
28 present case.

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breaks and an employee orientation brochure stating company policies and procedures which include the statement, ‘Rest breaks and meal periods are scheduled based on business levels, hours worked and applicable state laws.’” *Id.* at 122, fn. 1.

17. The *Kullar* parties then settled at mediation. *Id.* Neither the parties’ stipulation of settlement nor any other materials presented to the court at preliminary approval discussed the materials reviewed, the conclusions drawn from them in assessing damages and negotiating the settlement amount, or the problematic legal positions that had been considered and analyzed. *Id.* at 122, fn. 2, 126. Putative class members objected to the settlement. The objectors averred that plaintiff “failed to conduct reasonable discovery or pre-settlement investigation to determine facts necessary to ascertain the extent of class loss...including facts regarding the extent and rate of Labor Code violations by defendant, the likely or probable range of damages sustained by...class members arising from Labor Code violations by defendant, or the existence and nature of records maintained by defendant regarding claimed Labor Code violation.” *Id.* at 125, fn. 7 (quoting objection). Further:

[T]he objectors argued . . . [that] absolutely no discovery was conducted with respect to the claim that class members were not provided meal periods to which they were entitled. No declarations were filed in support of the settlement indicating the nature of the investigation that had been conducted to determine the number of employees that had allegedly been denied meal breaks, the frequency with which the denials had occurred, or the circumstances surrounding those denials, and no analysis was provided of the factual or legal issues that required resolution to determine the extent of any one-hour-pay penalties to which class members may have been entitled. No time records were produced in discovery nor was the court presented any estimated quantification of the number of one-hour-pay penalties that might be due or any explanation of the factors that were considered in discounting the potential recovery for purposes of settlement. *Id.* at 128-129.

18. The *Kullar* court agreed with the objectors that plaintiff did not make an adequate showing to enable the court to intelligently assess the settlement. “There was nothing before the court to establish the sufficiency of class counsel’s investigation other than their assurance that they had seen what they needed to see. The record fails to establish in any meaningful way what investigation counsel conducted or what information they reviewed on which they based their assessment of the strength of the class members’ claims, much less does the record contain information sufficient for the court to intelligently evaluate the adequacy of the settlement.” *Id.*

1 at 129. The *Kullar* court required that plaintiff provide the trial court with sufficient information
2 about the nature and magnitude of the claims being settled and the impediments to recovery to
3 enable it to make an independent assessment of the reasonableness of the settlement. *Id.* at 133.

4 19. As the foregoing discussion shows, the *Clark* and *Kullar* courts principally
5 wanted to ensure that trial courts, when deciding whether a class-action settlement is fair,
6 adequate, and reasonable, would independently evaluate the settlement amount in light of the
7 strength of the plaintiff's case, and that plaintiff should provide the court the information
8 necessary to make that evaluation. The *Clark* and *Kullar* courts cite the recognized factors set
9 forth in cases like *Dunk v. Ford Motors Co.* (1996) 48 Cal.App.4th 1794, 1801, that trial courts
10 should examine during the approval process, including (1) the extent of discovery completed
11 and the stage of the proceedings; (2) the strength of plaintiff's case in light of the settlement
12 amount; (3) the risk, expense, complexity, and likely duration of further litigation, as well as the
13 risk of maintaining class-action status through trial; (4) the experience and views of counsel;
14 and (5) the reaction of class members to the proposed settlement. *Id.* at 799.

15 20. Having discussed the governing law on class action settlements, I will now
16 discuss the above-listed factors.

17 **THE EXTENT OF INVESTIGATION AND STAGE OF PROCEEDINGS**

18 21. Prior to initiating this lawsuit, and as early as August 2019, Class Counsel
19 thoroughly investigated the claims and considered the facts and circumstances underlying the
20 pertinent issues and applicable law. This required thorough discussions and interviews with
21 Plaintiff and several other Settlement Class Members as well as research into the various legal
22 issues involved in the case. After conducting their initial investigation, Class Counsel
23 determined that the claims were well suited for class action adjudication owing to what appeared
24 to be a common course of conduct affecting a similarly situated group of employees.

25 22. As a result, Plaintiff filed this wage and hour class and representative action
26 alleging the following claims: (1) failure to pay wages and overtime compensation; (2) failure
27 to pay minimum wage; (3) rest break liability under Labor Code section 226.7; (4) meal period
28 liability under Labor Code section 226.7; (5) failure to reimburse business expenses under Labor

1 Code section 2802; (6) failure to timely pay wages due at termination or resignation; (7) failure
2 to provide accurate itemized employee wage statements; (8) violations of Business &
3 Professions Code section 17200, *et seq.*; and (9) penalties pursuant to California’s Private
4 Attorneys General Act (Labor Code § 2698, *et seq.*).

5 23. Plaintiff’s lawsuit seeks recovery of unpaid wages and overtime, premiums for
6 improper meal and rest breaks, reimbursement of business expenses, restitution, liquidated
7 damages, penalties for improper wage statements, waiting time penalties, wages, civil penalties
8 pursuant to the Private Attorneys General Act (“PAGA”), injunctive and other equitable relief,
9 prejudgment interest, and attorneys’ fees and costs.

10 24. Defendants deny Plaintiff’s allegations of wrongdoing. Defendants do not
11 believe that any liability to Plaintiff or other Settlement Class Members exist, or that Plaintiff
12 or Settlement Class Members are entitled to any recovery. In settling, Defendants do not admit
13 liability with respect to the alleged claims made by Plaintiff and make no admissions regarding
14 any facts or law related to the lawsuit. Defendants also dispute that Plaintiff would be able to
15 certify a class outside of the settlement context because, *inter alia*, Plaintiff’s claims on the
16 merits would require a series of individualized mini-trials; Defendants agreed to a settlement
17 class only.

18 25. Class Counsel conducted discovery which yielded information and
19 documentation concerning the claims set forth in the Action, such as Defendants’ dealerships’
20 written policies concerning the claims set forth in the Action, including Defendants’ policies
21 and procedures regarding the payment of wages, the provision of meal and rest breaks, time
22 keeping policies, such as recording hours, issuance of wage statements, and providing all wages
23 at separation, as well as information regarding the number of Settlement Class Members and the
24 mix of current versus former employees, the average number of hours worked, the wage rates
25 in effect, and length of employment for the average Settlement Class Member.

26 26. Defendants produced a substantial amount of documentation for Settlement
27 Class Members, including time and pay records and the employee handbooks, as well as
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1 composite data for the Settlement Class. Counsel met and conferred at length in-person and
2 telephonically regarding the information and documents produced.

3 27. Class Counsel analyzed the documents produced by Defendants and Settlement
4 Class Members in conjunction with Settlement Class Member interviews to determine
5 Defendants' degree of liability and amounts due in damages.

6 28. Thereafter, the Parties participated in a full-day mediation, where they debated
7 and discussed their positions. The Parties participated in a lengthy mediation session before the
8 Honorable Peter D. Lichtman (Ret.) of JAMS, one of the preeminent wage and hour class action
9 mediators in California.

10 29. During the mediation, the Parties exchanged further information and discussed
11 all aspects of the case, including the risks and delays of litigation and the risk to both Parties for
12 proceeding with a motion for class certification, liability under the claims asserted, and the
13 implications of a PAGA representative action. These were contentious issues because of the
14 factual and legal complexity of the case.

15 30. The case did not settle at mediation. The Parties continued to negotiate with the
16 assistance of Judge Lichtman. After several weeks, Judge Lichtman made a mediator's proposal
17 for a class-wide settlement, which was ultimately accepted by the Parties. Thereafter the Parties
18 engaged in extensive negotiations to draft the Stipulation of Resolution, along with the Notice
19 of Pendency of Class Action and Settlement, Claim Form, and Notice of Settlement Award.

20 31. The settlement negotiations were hard fought and conducted in good faith and at
21 arm's length between attorneys with substantial experience litigating class actions and wage and
22 hour cases. The settlement was the product of a non-collusive settlement process in which the
23 Parties were forced to make significant compromises in the interest of reaching a full and
24 complete settlement of the Action.

25 32. From Class Counsel's review of the facts, strengths, and weaknesses of the case,
26 the risks and delays posed by further litigation, and Class Counsel's own prior litigation
27 experience, Class Counsel believe that the recovery being made available to the Settlement Class
28 is fair, reasonable, and adequate taking into consideration the amounts received in other wage

1 and hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring
2 of each Settlement Class Members' claim to the settlement award he or she will receive. Class
3 Counsel believe that the settlement serves the best interests of Settlement Class Members.

4 33. Defendants have likewise concluded that, because of the substantial expense of
5 defending this Action, the length of time necessary to resolve the issues presented therein, the
6 inconvenience involved, and the concomitant disruption to their business operations, it is in their
7 best interests to accept the terms of this Settlement Agreement.

8 **THE STRENGTH OF THE CASE IN LIGHT OF THE SETTLEMENT AMOUNT**

9 34. Class Counsel carefully vetted the claims at issue to arrive at a comprehensive
10 damages model for Defendants' liability. Although Plaintiff steadfastly maintains that his claims
11 are meritorious, he acknowledges that there were substantial risks and uncertainty in proceeding
12 with class certification and trial. Defendants presented numerous defenses to Plaintiff's claims,
13 both on the merits and with respect to class certification. These risks justify a downward
14 departure from the maximum monetary exposure that each claim carries. The merits of each
15 claim will be addressed separately below.

16 **RISK, EXPENSE, COMPLEXITY, AND DURATION OF FURTHER LITIGATION**

17 35. Although Plaintiff conducted extensive discovery prior to mediation, the Parties
18 agreed to focus on exhausting early settlement efforts at mediation before launching into full-
19 fledged and hotly-contested litigation. Therefore, absent settlement, the Parties would have
20 needed to conduct substantial additional discovery, such as the production of voluminous records
21 and numerous depositions of experts and percipient witnesses, and prepare the case for class
22 certification and trial. The Parties would have had to depose a number of people such as
23 managers, supervisors, and employees in order to establish liability. Discovery disputes would
24 have been in the offing. This settlement avoids the considerable attorneys' fees and costs
25 associated with conducting gargantuan and costly supplemental discovery, moving for class
26 certification and potentially summary judgment or adjudication, and ultimately, trial, as well as
27 the risks and the accompanying burden of continued litigation on the Court.

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1 **RISK OF MAINTAINING CLASS ACTION STATUS**

2 36. Here, settlement was reached prior to class certification and the result was a
3 successful outcome for the Settlement Class. Yet, class certification was by no means a foregone
4 conclusion. For example, Plaintiff would face significant hurdles to certification given that
5 Settlement Class Members encompass a variety of job positions occupied by non-exempt hourly
6 employees across 14 California dealerships. More importantly, Settlement Class Members
7 signed arbitration agreements with class action waivers as a condition of their employment. If
8 Defendants' arbitration agreement defense is successful, it would severely limit the potential
9 relief available to Settlement Class Members. Even if Plaintiff prevailed and certified a class
10 action, there is no guarantee Defendants would not later move for and obtain decertification. If
11 the Court either denied class certification or later decertified it, the Settlement Class would
12 recover nothing and Settlement Class Members would be forced to retain their own counsel and
13 proceed on the basis of individual claims only.

14 37. Although Plaintiff was prepared to litigate these claims through class certification
15 and, ultimately, through trial, given the substantial amount offered in settlement, Plaintiff
16 predicted that it was far from certain that Plaintiff would be able to recover a greater amount at
17 trial, particularly after considering the increased litigation costs that would accrue.

18 **AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF CLAIMS**

19 38. Plaintiff's estimate of the settlement recovery is a reasonable percentage of
20 possible recoverable damages at trial. Plaintiff's damages analysis shows that the settlement
21 reflects an estimated 50.14% of the maximum possible damages recoverable at trial. Utilizing a
22 class-wide damages study to assess the nature and magnitude of the claims in question, *see*,
23 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 123, this case clearly meets
24 requirements establishing that the class settlement is within the "ballpark" of reasonableness.

25 39. This settlement provides a fair and reasonable monetary recovery for the class in
26 the face of disputed claims. Moreover, Settlement Class Members executed arbitration
27 agreements with class action waivers. If these agreements are enforced, Settlement Class
28 Members would not be able to seek relief on a class-wide basis. *See Epic Sys. Corp. v. Lewis*

1 (2018) 138 S. Ct. 1612 (class action waivers in arbitration agreements are enforceable). Instead,
2 Plaintiff would be limited to seeking individual relief in arbitration and PAGA relief in Court. It
3 is also possible that Defendants would be able to stay and delay the resolution of Plaintiff's
4 PAGA claims in Court while the individual claims were being resolved in arbitration. C.C.P. §
5 1281.4.

6 40. After interviewing Settlement Class Members, analyzing Defendants' payroll and
7 timekeeping data, and meeting and conferring with defense counsel, Plaintiff prepared a class-
8 wide exposure analysis and forecasted the Settlement Class's expected recovery for each claim
9 as follows:

10 Unpaid Wages

11 41. Plaintiff worked at Defendants' dealerships and, along with other hourly non-
12 exempt employees, preformed pre- and post-shift off the clock work to minimize the incidence
13 of overtime. Plaintiff contends that all off-the-clock work is compensable time. An employer
14 must pay its employees no less than the minimum wage for all hours worked, *see*, Labor Code §
15 1197, thus, Plaintiff sought to recover at least the minimum wage for all off-the-clock work, plus
16 liquidated damages in that amount under Labor Code section 1194.2.

17 42. Class Counsel analyzed the documents produced by Defendants in conjunction
18 with interviews of Plaintiff and other Settlement Class Members to determine Defendants' degree
19 of liability and amounts due in damages – specifically, the incidence and amount of off-the-clock
20 activity.

21 43. Notwithstanding the obvious evidentiary challenge of quantifying unrecorded off-
22 the-clock hours, Plaintiff estimates that Defendants are liable for a total of approximately twenty
23 minutes of unpaid time per workweek. At the average hourly rate of \$16.70, this yields an
24 estimated damages amount of \$1,308,099.76, without discounting associated risks of
25 certification or merits.

26 44. In terms of merit disputes, Defendants vigorously disagree with Plaintiff's
27 theories regarding how much off-the-clock work occurred in reality and the credibility of those
28 claimed hours given Defendants' written policies to the contrary.

1 45. The failure to track all hours poses evidentiary difficulties because it is hotly
2 contested how much off-the-clock work actually occurred. Although Class Counsel conducted
3 multiple employee interviews, for Plaintiff to establish the quantity of specific disputed and
4 unrecorded work activities – especially over multiple job titles, across various locations, at
5 differing pay rates - would have been costly, time-consuming, and daunting. In light of these
6 considerations, Class Counsel applied appropriate discounts for the risk of non-certification and
7 being unsuccessful on the merits.

8 46. Further, as with all of Plaintiff’s claims, Defendants contend that any potential
9 exposure was subject to arbitration agreements which preclude any class-wide recovery.
10 Notwithstanding the arbitration agreements, Defendants contend that Plaintiff’s claim for off the
11 clock work is not amenable to class treatment, because employees worked in a variety of
12 departments with different requirements at 14 dealerships, and it would require an unmanageable
13 series of mini-trials to determine how much time was spent without pay.

14 Meal and Rest Period Violations

15 47. Defendants contend that they had practices, policies, and procedures to provide
16 meal and rest breaks every workday to their employees that fully complied with the law.
17 Defendants vehemently argue that they complied with the requirements articulated by the
18 California Supreme Court in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th
19 1004. Specifically, Defendants maintain they “provide” employees with a reasonable
20 opportunity to take timely meal periods of at least 30 minutes, relieve employees of all duties
21 during meal periods, and relinquish control over employees’ activities, including the ability to
22 leave the premises during meal periods. Defendants also maintain that they provided duty-free
23 rest breaks of not less than ten minutes for every major fraction of four hours worked as required by
24 Labor Code section 226.7. Defendants obtained declarations from employees attesting to this
25 practice of providing compliant breaks. Defendants argue that they provided all required meal
26 and rest breaks in a legally compliant manner and that any late, short, or missed breaks were not
27 the result of any overarching policy/practice. To the extent that Settlement Class Members
28 failed to take their meal and rest breaks or took a short or late meal or rest period, Defendants

1 contend that they did so voluntarily and that all applicable meal and rest periods were still
2 provided to them. Thus, Defendants argue that they did not act unlawfully to deprive Settlement
3 Class Members of meal and rest periods. Defendants contend that the issue of voluntary waiver
4 would necessarily devolve into a series of individualized mini-trials, precluding class
5 certification. *See, Duran v. U.S. Bank National Association* (2014) 59 Cal. 4th 1, 25 (holding
6 that the defendant must be provided an opportunity to litigate affirmative defenses, even when
7 they turn on individual questions).

8 48. Oremor Automotive contends that there were multiple individual issues that
9 would pose challenges to certification, including and not limited to, (a) whether any meal and
10 rest periods were non-compliant, and (b) why they were non-compliant. Further, Defendants
11 contend that Settlement Class Members worked in different job positions and had different
12 managers, and that as a result, there was variation to the circumstances that could allegedly
13 cause the employees to be deprived of the opportunity to take legally-compliant, duty-free meal
14 and rest periods, and this variation in circumstances raised highly individualized questions of
15 fact.

16 49. Finally, as with Plaintiff's other claims, Defendants argue that meal and rest
17 break claims are subject to binding arbitration agreements. In addition, even absent the
18 arbitration agreements, Defendants vehemently contend that their written policies are facially
19 compliant under *Brinker v. Superior Court* (2012) 53 Cal. 4th 1004, are an obstacle to both
20 certification and success on the merits of the claim – especially across 14 different dealership
21 locations. Defendants argue that no common evidence can establish *why* any employees clocked
22 in early from and/or late for a break. Assuming *arguendo* that the class action waiver did not
23 apply, Defendants maintain that certification would be difficult because individualized inquiries
24 regarding the timing and extent of deviations from ordinary meal and rest break policies would
25 significantly predominate.

26 50. Class Counsel considered the risk of further litigating the case, including the
27 significant additional costs that would be incurred by both sides if the matter did not settle, as
28 litigating a class action through class certification, trial, and/or appeals is very expensive.

1 Litigating meal and rest period claims is inherently difficult as an employer's records, as is the
2 case here, do not usually indicate when a meal period is interrupted and when a rest period is
3 short, late, interrupted, or missed entirely. While Class Counsel disagreed with Defendants'
4 arguments and factual contentions, Class Counsel recognized the circumstances and realities of
5 the case, applicable case law and regulations, costs and expenses of further litigation and
6 certification, and risks to recovery, and applied appropriate discounts for them.

7 51. Defendants dispute Plaintiff's characterization of working conditions, liability,
8 and damages, and possesses documentary and testimonial evidence rebutting Plaintiff's
9 allegations. Notwithstanding the strength of Defendants' defenses to certification and merits,
10 Class Counsel considered information obtained through investigations and from Plaintiff and
11 other Settlement Class Members, as well as class data provided by Defendants, and created
12 damages/valuation models prior to the mediation. Based on Class Counsel's investigation and
13 discovery evidencing a violation rate of 14% of missed, interrupted, or untimely meal and rest
14 breaks, the estimated meal and rest break claim valuation is estimated to be \$2,747,009.49,
15 without discounting associated risks of certification or merits.

16 Unreimbursed Expenses

17 52. Plaintiff alleges a cause of action under Labor Code section 2802(a) which states
18 that an employer must reimburse employees for all necessary expenditures that employees incur
19 in discharging their duties. Here, Settlement Class Members were required to use their personal
20 cell phones to communicate with customers, supervisors, coworkers and other persons for
21 reasons related to work, yet Defendants failed to reimburse for these necessary business
22 expenses.

23 53. Defendants contend that they have a policy and practice of reimbursing employees
24 for necessary business-related expenses. Defendants also contend that, with respect to the alleged
25 expenses for which Plaintiff and other Settlement Class Members never requested reimbursement
26 from Defendants, Defendants did not know and had no reason to know that the alleged business-
27 related expenses were incurred. Defendants maintain that employees were able to use phones at
28 the workplace to communicate with customers, supervisors, coworkers and other persons for

1 reasons related to work and that it was rare, if ever, that employees were required to use their
2 personal cell phones for business purposes. Moreover, to the extent it occurred, Defendants assert
3 that this claim is not suitable for class treatment as it would require individualized determinations
4 as to whether each employee used a personal cell phone for work-related purposes and, if so,
5 how much of that use was a reasonable percentage of his or her individual monthly phone bill.

6 54. Defendants also contend that the California Labor Code only requires
7 reimbursement of “necessary” expenses—as opposed to any expense that is incurred in the course
8 of performing work—and argued that distinguishing a necessary expense from an unnecessary
9 one would require individualized inquiry. *See* Cal. Lab. Code § 2802; *Gattuso v. Harte-Hanks*
10 *Shoppers, Inc.* (2007) 42 Cal. 4th 554. Furthermore, whether an expense was necessary would
11 depend in part on the reasonableness of the employee’s choice and would thus have to be
12 established by way of extensive individual factual inquiry and/or statistical evidence. *Cochran*
13 *v. Schwan’s Home Services, Inc.* (2014) 228 Cal. App. 4th 1137.

14 55. For the foregoing reasons and taking into account the wide variety of telephone
15 plans, providers and costs which creates evidentiary complexities on an individual basis, let alone
16 class-wide, Plaintiff assigns a *de minimis* value to this claim.

17 Wage Statement Violations

18 56. Plaintiff alleges a cause of action under Labor Code section 226(a) for
19 Defendants’ failure to provide accurate itemized wage statements. Failure to comply with the
20 statute entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for
21 the initial pay period in which a violation occurs and one hundred dollars (\$100) for each
22 violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
23 (\$4,000). *See*, Labor Code § 226(e). This cause of action is derivative of the foregoing causes of
24 action because if Defendants did not provide wages for all hours worked, meal and rest breaks,
25 and so forth, then the wage statements were inevitably inaccurate. Based on the \$50 initial
26 violation, plus the \$100 per pay period subsequent violation rates, Plaintiff estimates the total
27 wage statement exposure to be \$1,917,500.

28 ///

1 57. Defendants contend, however, that Labor Code section 226(e) penalties are not
2 automatic. Rather, the employee must show that Defendants' noncompliance was "knowing and
3 intentional." Defendants suggest that any noncompliance was not knowing and intentional.
4 Moreover, Defendants argue that meal and rest period violations cannot support derivative wage
5 statement penalties. *See Jones v. Spherion Staffing, Inc.* (C.D. Cal. Aug. 7, 2012) Case No. LA
6 CV11-06462, 2012 WL 3264081 at *8-9 (granting defendant's motion for judgment on the
7 pleadings because plaintiffs "cannot advance a claim for noncompliant wage statements or failure
8 to pay wages due upon termination based solely on alleged violations of section 226.7.") Finally,
9 because the damages for this cause of action are penalties, the statute of limitations is only one
10 year prior to the filing of the original complaint. *See*, Code Civ. Proc. § 340. The Parties discussed
11 these issues and, in light of these considerations, Class Counsel factored in a reduction of liability
12 and damages for this cause of action.

13 Derivative Waiting Time, PAGA Penalties, and UCL Claims

14 58. Plaintiff further asserts causes of action against Defendants for failure to timely
15 pay all wages due employees at separation, for civil penalties under the PAGA, and for engaging
16 in unfair, unlawful and fraudulent business practices. *See*, Labor Code §§ 203, 2699, *et seq.* and
17 Cal. Business and Professions Code § 17200, *et seq.* As with other claims, Defendants vigorously
18 disagree that they engaged in any conduct giving rise to liability or entitlement to recovery of
19 penalties or equitable relief.

20 59. Defendants argue that waiting time penalties are not appropriate because they
21 attempted to pay employees all final wages owed in good faith upon their separation, thereby
22 precluding a finding of willfulness necessary to obtain waiting time penalties. Moreover,
23 Defendants maintain that no waiting time penalties were recoverable from alleged meal or rest
24 period violations. *See Ling v. P.F. Chang's China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242,
25 1261 (holding that waiting time penalties are not recoverable as a result of unpaid meal and rest
26 period premiums). To the extent that Plaintiff's waiting time penalty claim is derivative of the
27 off-the-clock work, Defendants argue that it is overstated because not all of the former employees
28 could be proven to have experienced an underpayment of wages.

1 60. The success of Plaintiff's PAGA claim is wholly dependent upon the success of
2 his underlying claims occurring within the one-year statute of limitations applicable to the
3 PAGA. Defendants contend that these penalties are derived from the underlying wage and hour
4 violations discussed above, which Defendants disputed. *See e.g., Green v. Lawrence Service Co.*
5 (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was
6 determined by the merits of its underlying claims). Defendants maintained and continue to
7 maintain that they had legally compliant employment policies and practices throughout the
8 statutory period. Defendants denied and continue to deny that they ever violated any provision
9 of the California Labor Code and argued that, even assuming *arguendo* that such violations
10 occurred, Defendants will not be treated as having engaged in subsequent violations giving rise
11 to heightened penalties. In other words, Defendants argue that heightened civil penalties for
12 subsequent violations would not be assessed unless it could be shown that Defendants had notice
13 that they were violating the law, e.g., they had been cited by a labor agency or adjudged by a
14 court to have done so. *See, e.g., Amaral v. Cintas Corp.* (2008) 163 Cal. 4th 1157, 1209. Thus,
15 Defendants contend that, at best, even if a violation giving rise to a penalty was shown for each
16 pay period, only the lower civil penalty associated with initial violations would apply.

17 61. Importantly, to prevail on the PAGA claim, Defendants contend that some courts
18 have required a plaintiff to show at the outset that he or she has suffered injury, in order to
19 establish standing, and that Plaintiff would also have to prove all requisite elements to prove
20 violations of the underlying California Labor Code provisions, in order to show that Defendants'
21 conduct gives rise to penalties. The unpaid wages and meal and rest period allegations are
22 fundamental to this action; however, for the reasons discussed above, there were substantial
23 challenges to showing liability and exposure for these claims. Defendants argue that Plaintiff
24 would not be able to establish violations of the underlying California Labor Code provisions
25 and the fundamental allegations regarding unpaid wages and meal and rest periods. Defendants
26 also contend that multiple individualized issues vitiated the manageability of representative
27 adjudication of PAGA penalties.

28 ///

1 62. Defendants also contend that, before a PAGA claim could be tried, under existing
2 law, the court of law would have to be satisfied that the adjudication of the PAGA claim, based
3 on a theory of uniform wage and hour practices relating to a large group of aggrieved employees,
4 is sufficiently “manageable” so as not to interfere with Defendants’ right to due process.
5 Defendants allege that Settlement Class Members’ job duties and work hours varied.
6 Defendants contend that there was variation as to the circumstances that could allegedly cause
7 the employees to work off the clock or to be deprived of the opportunity to take legally
8 compliant, duty-free meal and/or rest periods. Defendants further contend that these issues
9 presented challenges not only to liability but also challenges to Plaintiff’s ability to show that a
10 PAGA claim could be efficiently and manageably adjudicated without abridging Defendants’
11 due process rights.

12 63. Moreover, the Court has discretion to reduce any award of PAGA penalties
13 where it views them as duplicative. *See*, § 2699e(2) (the Court may “award a lesser amount than
14 the maximum civil penalty amount [authorized by PAGA] if, based on the facts and
15 circumstances of the particular case, to do otherwise would result in an award that is unjust,
16 arbitrary and oppressive, or confiscatory.”).

17 64. Defendants also point to case law demonstrating that courts have attributed little
18 separate value to PAGA claims, for example, allowing them to be resolved for \$0 where the
19 other underlying California Labor Code claims are being resolved. *See, e.g., Matter of*
20 *Nordstrom Commission Cases* (2010) 186 Cal. App. 4th 576, 588-590 (holding no abuse of
21 discretion by the trial court in approving the allocation of \$0 toward PAGA penalties, where
22 PAGA claim is resolved as a part of an overall resolution of the underlying California Labor
23 Code violations); *Franco v. Ruiz Food Prods, Inc.* (E.D. Cal. Nov. 27, 2012) No. 1:10-cv-02354-
24 SKO, 2012 WL 5941801, at *14 (approving allocation of \$10,000, out of the settlement of \$2.5
25 million, toward the settlement of the PAGA claim); *Garcia v. Gordon Trucking* (E.D. Cal. Oct.
26 31, 2012) No.1:10-CV-0324-AWI-SKO, 2012 WL 5364655, at *3 (approving the allocation of
27 \$10,000, out of the settlement of \$3.7 million, toward the settlement of the PAGA claim); *Chu*
28 *v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011) No. C 05-4526 MHP, C 0647924

1 MHP, 2011 WL 672645, at *1 (approving the allocation of \$10,000, out of the settlement of
2 \$6.9 million, toward the settlement of the PAGA claim); *Jack v. Hartford Ins. Co.* (S.D. Cal.
3 Oct. 13, 2011) No. 3:09-cv-1683-MMA (JMA), 2011 WL 4899942, at *18 (approving the
4 allocation of \$3,000, out of the settlement of \$1.2 million, toward the settlement of the PAGA
5 claim); *Schiller v. David's Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14
6 (approving the allocation of \$10,000, out of the settlement of \$518,245, toward settlement of
7 the PAGA claim).

8 65. Plaintiff calculated an estimate of approximately \$5,090,160 in waiting time
9 penalties (approximately 1,270 former employees) and \$3,294,200 in PAGA penalty exposure
10 (using the “initial” \$100 per pay period violation as opposed to the \$200 subsequent per violation
11 rate).

12 66. Class Counsel applied discounts to assess the likely recovery of waiting time
13 penalties. Class Counsel also considered the likelihood of prevailing on each of the underlying
14 claims, with the additional hurdles required to establish waiting time penalties, such as the
15 difficulty of proving the “willful” prong of section 203. Additionally, Class Counsel weighed
16 applicable case law, the costs and expenses associated with further litigation and certification,
17 the circumstances and realities of the case, and risks to recovery, and applied appropriate
18 discounts for them.

19 67. For the PAGA claim, Class Counsel applied discounts for the risks in establishing
20 manageability and possible bifurcation of discovery and/or trial, the risks regarding success on
21 the merits and establishing liability, and the risks with proving the extent of penalties that are
22 warranted and possible discretionary reduction of penalties by the Court.

23 68. Although, strictly speaking, class certification requirements are not required to
24 be satisfied in order to adjudicate a PAGA claim, the state of the law with respect to the
25 adjudication and valuation of a PAGA claim is uncertain. Instead, what is clear is that the
26 purpose of the PAGA is not to generate revenue for the State but rather to facilitate the
27 enforcement of the labor laws. *See, e.g., Williams v. Superior Court* (2017) 3 Cal. 5th 531, 546;
28 *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 986; Cal. Lab. Code § 2699(i). In assessing the

adequacy of the recovery under a PAGA claim, the focus is not the amount which the LWDA and the aggrieved employees are to receive formally in the form of monetary civil penalties but instead whether the total settlement amount achieves the PAGA’s objectives. “When PAGA claims are settled, courts “consider whether the proposed PAGA settlement is fair and adequate in view of the purposes and policies of the statute[]” and “[t]hose purposes and policies include benefit[ting] the public by augmenting the state’s enforcement capabilities, encouraging compliance with California Labor Code provisions, and deterring noncompliance.” *O’Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d 1110, 1132-33 and 1135. A “[c]ourt does not review the PAGA allocation in isolation, but rather reviews the settlement as a whole, to determine whether it is fundamentally fair, reasonable and adequate, with primary consideration for the interests of absent class members.” LWDA’s Comments on Proposed PAGA Settlement in *O’Connor v. Uber Techns.* (N.D. Cal. July 29, 2016) No. 13-CV- 03826-EMC, Docket No. 736, at 4:17-19. “PAGA penalties must be evaluated in terms of their public policy objective and not just through the prism of what private relief has been sought or obtained.” *Id.* at 4:14-16.

Summary

69. After Class Counsel calculated that the maximum possible recovery in damages to Settlement Class Members, counsel discounted the maximum figure by a variable 50% for class certification (conservative, given the existence of arbitration agreements with class action waivers) and a 50% reduction across all claims for establishing liability on the merits, which yields a potential recovery of \$3,589,242.31. Thus, the proposed recovery to the Settlement Class of \$1,800,000 represents an approximate 50.14% of Plaintiff’s potential recovery, while avoiding the further expense and serious risk of proceeding toward class certification and trial. “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242 (internal quotations omitted). *See, e.g., Altamirano v. Shaw Industries, Inc.* (N.D. Cal. 2015) 2015 WL 4512372, at *9 (preliminarily approving wage and hour class action settlement stating, “[a]lthough 15%

1 represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that
2 figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff's
3 claims). (Note that \$1.2 million is 15% of \$8 million.) Taking into account the risk of non-
4 certification, failure to prevail on the merits, and the Court's power to reduce the civil penalties,
5 the proposed settlement falls within the realm of being fair, reasonable, and adequate.

6 **EXPERIENCE AND VIEWS OF COUNSEL**

7 70. CounselOne, and its attorneys, have represented millions of consumers and
8 employees in numerous consumer and employment class actions throughout the nation. A
9 substantial percentage of CounselOne's practice is devoted to class action litigation, particularly
10 in the areas of consumer protection, consumer privacy, employment, and false advertising.
11 CounselOne was recently certified as class counsel in a consumer-privacy actions against Apple
12 involving almost one million Californians. *See Deveroux v. Apple, Inc.*, Santa Clara Super. Ct.
13 Case No. 1-14-CV-271773, May 26, 2018.

14 71. CounselOne, and its attorneys, are well qualified because of our experience,
15 knowledge, and resources to act as counsel and represent the putative class in this action.
16 CounselOne has a substantial percentage of our practice devoted to litigating wage-and-hour and
17 working conditions violations, and the bulk of these cases are class actions.

18 72. CounselOne, and its attorneys, have obtained favorable settlements against a
19 range of defendants, including many Fortune 1000 companies. There follows a list of some of
20 CounselOne's class action cases that have received final approval:

- 21 a. *Hoffman v. Bank of America*, CASD Case No. 3:12-cv-539 JAH (DHB);
- 22 b. *Byanooni v. Merrill Lynch Pierce Fenner & Smith*, CAND Case No. 3:12-cv-
23 05270-RS;
- 24 c. *Knell v. FIA Card Services, Inc.*, CASD Case No. 3:12-cv-00426-AJB-WVG;
- 25 d. *Lewert. v. Vendini, Inc.*, Santa Clara Super. Ct. Case No. 1-14-CV-259897;
- 26 e. *Klacko v. Diamond Foods, Inc.*, S.D. Fla. Case No. 9:14-cv-80005-BB;
- 27 f. *Romero v. Loacker*, Santa Clara Super. Ct. Case No. 1-14-CV-274434;
- 28 g. *Zadeh v. Ikon*, LASC Case No. BC470371;

- 1 h. *Fast v. Hilton Hotel Corporation*, LASC Case No. BC409467;
2 i. *Sink-Crilly v. Centex Homes*, CACD Case No. CV09-2476;
3 j. *Alexander v. DS Waters of America*, CACD Case No. CV09-03384;
4 k. *Collins v. Live Nation Worldwide, Inc.*, LASC Case No. BC436141;
5 l. *Milford v. ADT Security Services, Inc.*, CACD Case No. CV08-2236;
6 m. *Beal v. Activision, Inc.*, LASC Case No. BC348560;
7 n. *Vasquez v. The Hollywood Pig n Whistle LP*, LASC Case No. BC335075;
8 o. *Flores v. Loomis Armored*, LASC Case No. BC409899;
9 p. *Galavis v. Patina Restaurant Group, LLC*, LASC Case No. BC375225;
10 q. *Dupont v. Innovative Dining Group*, LASC Case No. BC391240;
11 r. *Fluke v. RFG Oil, Inc.*, LASC Case No. BC403354;
12 s. *Smith v. Rio Rancho Pontiac GMC Buick Inc.*, LASC BC391187;
13 t. *Urena v. Camachos Restaurant*, LASC Case No. BC365913;
14 u. *Callela v. Dolce Group*, LASC Case No. BC364711;
15 v. *Healy v. Siemens IT Solutions and Services, Inc.*, Santa Clara Super. Ct. Case No.
16 108CV113479;
17 w. *Gonzalez v. Calstar Motors, Inc.*, LASC BC479756;
18 x. *Morris v. Gymboree, Inc.*, LASC Case No. BC393270;
19 y. *Garcia v. California Credits Group*, LASC Case No. BC353213;
20 z. *Rylko v. The Griddle Café, Inc.*, LASC No. BC386126;
21 aa. *Afanasyev v. Miller Infiniti, Inc.*, LASC Case No. BC350788;
22 bb. *Ortega v. AJC Sandblasting, Inc.*, LASC Case No. BC378806;
23 cc. *Goldman v. Aorta Restaurant Operating LP*, LASC Case No. BC379688;
24 dd. *In Re Walgreen Co. Wage And Hour Litigation*, CACD Case No. 11-cv 07664-
25 PSG (FFMx);
26 ee. *Lulejyan v. Jim Falk Motors of Beverly Hills, Inc.*, LASC Case No. BC398459;
27 ff. *White v. RBD Staffing, Inc., Sprint Communications Company*, CACD Case No.
28 2:15-cv-08519-GHK-KS;

- 1 gg. *Carreon v. Wolfgang Puck Catering and Events, LLC*, LASC Case No.
2 BC398569;
- 3 hh. *Fikara v. Niemann Foods Inc.*, Case No. 3:16-cv-03285-TSH (Cent. Dist. Ill.);
4 ii. *Bradley v. Mercedes-Benz*, LASC Case No. BC499494;
5 jj. *Davies v. Godiva Chocolatier, Inc.*, LASC Case No. BC429547;
6 kk. *Ederly v. Citibank*, San Francisco Super. Ct. Case No. CGC-14-538436; and
7 ll. *Huebner v. ManTech International Corporation*, CACD Case No. 2:15-cv-
8 09889-PA-SS.

9 73. The attorneys at CounselOne have litigated, and successfully settled, a number of
10 wage-and-hour class actions specifically against automobile dealerships. This experience has
11 given us familiarity with the business operations of dealerships generally, and their employment
12 policies and practices. This background is helpful in assessing the reasonableness of settlements
13 with dealerships, such as the one at issue here; and from this experience the attorneys at
14 CounselOne have concluded that this action could not have been settled on better terms than
15 provided under the present settlement agreement.

16 74. In sum, the attorneys at CounselOne are experienced in employment class-action
17 litigation and are adequate to represent the Settlement Class in the instant action.

18 **CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS**

19 75. The proposed class satisfies the criteria for certification of a settlement under
20 California law, as embodied in California Code of Civil Procedure, section 382. Defendants
21 have agreed to the certification of the class for settlement purposes. In general, courts may take
22 a proposed settlement into account in evaluating the propriety of class certification. *See, Dunk*
23 *v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1807, fn. 19. Indeed a “lesser standard” of
24 scrutiny applies in certifying classes for settlement purposes. *Id.* Therefore, the Court should
25 take into consideration the fact that the Parties have settled their claims and stipulated to
26 certification for settlement purposes when making its assessment.

27 76. **Numerosity and Ascertainability.** Settlement Class Members are comprised of
28 “[a]ll persons who are or were employed by Defendants in the State of California as non-exempt

hourly employees at any time from October 1, 2015, and continuing through March 15, 2020.” (Settlement Agreement ¶ I.Q., R.) Thus, all Settlement Class Members are of a specific type (non-exempt employees and paid on an hourly basis) employed within California. Defendants are required to and do maintain a record of each such person, including contact information and Social Security numbers. Documents and information exchanged reflect a class of approximately 2,109 current and former hourly non-exempt employees working in California during the Settlement Period. Thus, the Settlement Class satisfies the ascertainability and numerosity requirements. *See e.g., Collins v. Rocha* (1972) 7 Cal. 3d 232 (finding a class of 44 farm workers sufficiently numerous).

77. **Commonality.** Here, litigation is predicated on uniform company policies principally revolving around Defendants’ timekeeping policies, employee compensation, as well as meal and rest period practices and reimbursement policies. Plaintiff has alleged a single top-down compensation scheme where “the relevant proof [does] not vary among class members” and “clearly present[] a common question fundamental to all class members.” *See, In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997) 169 F.R.D. 493, 518). California courts show “no hesitancy” in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal. App. 3d 1341, 1350 (granting class certification in a manufacturing defect case when a common course of action had been proven). This inference “eliminates the need for each class member to prove individually the consequences of the defendants’ actions to him or her.” *Id.* at 1351 (emphasis added). Thus, the outcome of this matter depends upon questions that are common to members of the Settlement Class. These types of claims are commonly held to be proper for class certification.

78. **Typicality.** Plaintiff’s claims are typical of those held by the members of the Settlement Class. Like all other Settlement Class Members, Plaintiff was a non-exempt hourly employee working at Defendants’ automobile dealerships during the Settlement Period. Plaintiff was not compensated for all of the hours he worked, was not provided with legally compliant

meal and rest breaks, and was required to incur business expenses necessary to perform his job duties without reimbursement. Plaintiff was therefore impacted by the same challenged policies that allegedly injured the Settlement Class as a whole and was subject to the same defenses forwarded by Defendants as to the Settlement Class and is therefore typical.

79. **Adequacy.** Plaintiff and Class Counsel will adequately represent the Settlement Class, as there are no conflicts between the named Plaintiff and the Settlement Class he seeks to represent. *McGhee v. Bank of America* (1976) 60 Cal. App. 3d 442, 450 (finding adequacy satisfied where there was no indication that plaintiff's counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour litigation.

80. **Superiority.** By consolidating potentially over two thousand individual actions into a single proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the efficiency interests of the litigants and the judicial system. Absent class treatment, the only alternative would be to force more than two thousand employees to file individual actions. *Sav-on Drug Stores v. Super. Ct.* (2004) 34 Cal. 4th 319, 339, fn. 10 (stating "[t]he relevant comparison lies between the costs and benefits of adjudicating plaintiffs' claims in a class action and the costs and benefits of proceeding by numerous separate actions – *not* between the complexity of a class suit that must accommodate some individualized inquires and the absence of any remedial proceeding whatsoever.") Finally, in the context of settlement, the superiority concerns are essentially non-existent.

**PROPOSED NOTICE PROVIDES ADEQUATE
NOTICE TO THE SETTLEMENT CLASS**

81. This Court should order distribution of the proposed Notice (comprised of the Notice of Pendency of Class Action and Settlement, and the Notice of Settlement Award) and the Claim Form to former employees, *see*, internal exhibits "A" and "B" to the Stipulation of Resolution attached hereto, to the Settlement Class by first class mail, postage prepaid, using the last known mailing address information provided by Defendants.

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1 82. Plaintiff proposes that the settlement be administered by CPT Group, Inc.
2 (“CPT”), an experienced class action settlement administrator. Settlement Class Members’
3 addresses will be ascertainable through Defendants’ personnel and payroll records, which
4 Defendants will provide to CPT within ten (10) days after preliminary approval of the
5 settlement. To the extent that any notices are returned, CPT will run those addresses through the
6 National Change of Address database and/or conduct skip traces to obtain current address
7 information.

8 83. The content of the proposed Notice satisfies California Rule of Court 3.766(d)
9 because it advises Settlement Class Members of the nature of the claims, basic contentions and
10 denials of the Parties, the key terms of the settlement, the uniform 45-day deadline to participate,
11 submit a dispute, opt out or object to the settlement and the procedure by which to do so, and
12 explains the recovery formula and expected recovery amount for each Settlement Class
13 Member.

14 84. The proposed Notice will also notify Settlement Class Members of the final
15 approval hearing date, provide the contact information for Class Counsel, and advise Settlement
16 Class Members that they may enter an appearance through counsel if they wish. This manner
17 of giving notice is the “best notice practicable” under the circumstances because it provides
18 “individual notice to all members who can be identified through reasonable effort.” *Eisen v.*
19 *Carlisle and Jacqueline* (1974) 417 U.S. 156, 173.

20 I declare under penalty of perjury, under the laws of the State of California and the
21 United States of America, that the foregoing is true and correct.

22 Executed this 22nd day of July 2020, at Beverly Hills, California.

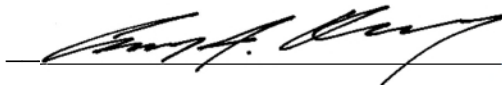
23
24 
25 Anthony J. Orshansky

EXHIBIT 1

1 ANTHONY J. ORSHANSKY (SBN 199364)
anthony@counselonergroup.com
2 JUSTIN KACHADOORIAN (SBN 260356)
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3 **COUNSELONE, PC**
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4 Beverly Hills, California 90210
Telephone: (310) 277-9945
5 Facsimile: (424) 277-3727

6
7 Attorneys for Plaintiff Herbert Hurtado on behalf of himself
and others similarly situated
8
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**

12 HERBERT HURTADO, on behalf of himself
13 and others similarly situated,

Case No.: CIVDS2006540

14 Plaintiff,

STIPULATION OF RESOLUTION

15
16 v.
17

18 J. MCCULLOUGH CORP. dba OREMOR
19 AUTOMOTIVE GROUP, a California
corporation; OREMOR OF FRESNO, INC.
20 dba FRESNO LEXUS, a California
corporation; OREMOR OF GLENDALE LLC
21 dba TOYOTA OF GLENDALE, a California
company; OREMOR OF RIVERSIDE, LLC
22 dba BMW OF RIVERSIDE, a California
company; OREMOR OF RIVERSIDE II, LLC
23 dba INFINITI OF RIVERSIDE, a California
company; OREMOR OF RIVERSIDE RC,
24 LLC dba RIVERSIDE CHEVROLET, a
25 California company; OREMOR OF
TEMECULA, LLC dba TEMECULA
26 VALLEY TOYOTA, a California company;
27 OREMOR OF TUSTIN, INC. dba TUSTIN
TOYOTA, a California corporation;
28 OREMOR EUROPEAN, LLC dba
MERCEDES BENZ OF EL CAJON, a

STIPULATION OF RESOLUTION

1 California company; UNITED RECOVERY,
2 INC., a California corporation; OREMOR OF
3 ITALY, INC. dba FIAT OF ONTARIO, a
4 California corporation; OREMOR OF ITALY
5 II, LLC dba MASERATI & ALFA ROMEO
6 OF ONTARIO, a California company;
7 OREMOR OF WOODLAND HILLS LLC dba
8 LEXUS OF WOODLAND HILLS, a
9 California company; AQUIRECORP'S
10 NORWALK AUTO AUCTION dba
11 NORWALK AUTO AUCTION, a California
12 corporation; JEEP CHRYSLER OF
13 ONTARIO, INC. dba JEEP CHRYSLER
14 DODGE RAM FIAT, DODGE OF
15 ONTARIO, a California corporation;
16 ROMERO MOTORS CORPORATION dba
17 ONTARIO HYUNDAI MAZDA, a California
18 corporation; EMPIRE NISSAN, INC., a
19 California corporation; and DOES 1 through
20 100,
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23
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27
28

Defendants.

1 This Stipulation of Resolution is made by and between Herbert Hurtado
2 ("Plaintiff" or "Class Representative"), on behalf of himself and others similarly situated, on the
3 one hand, and J. McCullough Corp. dba Oremor Automotive Group, a California corporation;
4 Oremor of Fresno, Inc. dba Fresno Lexus, a California corporation; Oremor of Glendale LLC
5 dba Toyota of Glendale, a California company; Oremor of Riverside, LLC dba BMW of
6 Riverside, a California company; Oremor of Riverside II, LLC dba Infiniti of Riverside, a
7 California company; Oremor of Riverside RC, LLC dba Riverside Chevrolet, a California
8 company; Oremor of Temecula, LLC dba Temecula Valley Toyota, a California company;
9 Oremor of Tustin, Inc. dba Tustin Toyota, a California corporation; Oremor European, LLC dba
10 Mercedes Benz of El Cajon, a California company; United Recovery, Inc., a California
11 corporation; Oremor of Italy, Inc. dba Fiat of Ontario, a California corporation; Oremor of Italy
12 II, LLC dba Maserati & Alfa Romeo of Ontario, a California company; Oremor of Woodland
13 Hills LLC dba Lexus of Woodland Hills, a California company; Aquirecorp's Norwalk Auto
14 Auction dba Norwalk Auto Auction, a California corporation; Jeep Chrysler of Ontario, Inc. dba
15 Jeep Chrysler Dodge Ram Fiat, Dodge of Ontario, a California corporation; Romero Motors
16 Corporation dba Ontario Hyundai Mazda, a California corporation; and Empire Nissan, Inc., a
17 California corporation (collectively, "Defendants" or "Oremor Automotive"), on the other hand
18 (together, the "Parties"), in the case entitled *Hurtado, et al. v. J. McCullough Corporation dba*
19 *Oremor Automotive Group, et al.*, San Bernardino Superior Court, Case No. CIVDS2006540
20 ("Action").

21 **I. DEFINITIONS**

22 **A. Action.** The term "Action" as used herein means the case entitled *Hurtado, et al.*
23 *v. J. McCullough Corporation dba Oremor Automotive Group, et al.*, San Bernardino Superior
24 Court, Case No. CIVDS2006540.

25 **B. Administrative Costs.** All administrative costs of settlement, including cost of
26 notice to the Settlement Class, claims administration, and any fees and costs incurred or charged
27 by the Settlement Administrator in connection with the execution of its duties under this
28 Stipulation of Resolution.

1 **C. Agreement.** The terms "Agreement" or "Settlement Agreement" or "Resolution"
2 are used synonymously herein to mean this Stipulation of Resolution to resolve this Action.

3 **D. Class Counsel.** The term "Class Counsel" as used herein means CounselOne,
4 P.C., counsel for and acting on behalf of Plaintiff and the Settlement Class.

5 **E. Class Representative.** The terms "Class Representative" or "Plaintiff" are used
6 synonymously herein to mean Herbert Hurtado.

7 **F. Defendants.** The term "Defendants" or "Oremor Automotive" are used
8 synonymously herein to mean J. McCullough Corp. dba Oremor Automotive Group, a California
9 corporation; Oremor of Fresno, Inc. dba Fresno Lexus, a California corporation; Oremor of
10 Glendale LLC dba Toyota of Glendale, a California company; Oremor of Riverside, LLC dba
11 BMW of Riverside, a California company; Oremor of Riverside II, LLC dba Infiniti of Riverside,
12 a California company; Oremor of Riverside RC, LLC dba Riverside Chevrolet, a California
13 company; Oremor of Temecula, LLC dba Temecula Valley Toyota, a California company;
14 Oremor of Tustin, Inc. dba Tustin Toyota, a California corporation; Oremor European, LLC dba
15 Mercedes Benz of El Cajon, a California company; United Recovery, Inc., a California
16 corporation; Oremor of Italy, Inc. dba Fiat of Ontario, a California corporation; Oremor of Italy
17 II, LLC dba Maserati & Alfa Romeo of Ontario, a California company; Oremor of Woodland
18 Hills LLC dba Lexus of Woodland Hills, a California company; Aquirecorp's Norwalk Auto
19 Auction dba Norwalk Auto Auction, a California corporation; Jeep Chrysler of Ontario, Inc. dba
20 Jeep Chrysler Dodge Ram Fiat, Dodge of Ontario, a California corporation; Romero Motors
21 Corporation dba Ontario Hyundai Mazda, a California corporation; and Empire Nissan, Inc., a
22 California corporation.

23 **G. Employer Taxes.** The term "Employer Taxes" as used herein means employer-
24 funded taxes and contributions imposed on the wage portions of the Net Settlement Payments
25 under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and any
26 similar state taxes and contributions required of employers, such as for unemployment insurance.
27 The Settlement Amount does not include Employer Taxes.

1 **H. Net Settlement Amount.** The term "Net Settlement Amount" as used herein
2 means the Settlement Amount minus any award of attorneys' fees and costs, Administrative
3 Costs, enhancement payment to the Class Representative, and penalties recoverable pursuant to
4 California's Private Attorneys General Act ("PAGA") ("PAGA Settlement").

5 **I. Net Settlement Payments.** The term "Net Settlement Payment(s)" shall include
6 payments made to the Settlement Class as part of the Resolution, including wages, penalties and
7 interest.

8 **J. Parties.** The term "Parties" refers collectively to Plaintiff and Defendants.

9 **K. Plaintiff.** The terms "Class Representative" or "Plaintiff" are used synonymously
10 herein to mean Herbert Hurtado.

11 **L. Released Parties.** The term "Released Parties" means Defendants, their
12 respective subsidiaries, affiliates, predecessors or successors in interest, or the officers, directors,
13 shareholders, employees, attorneys, agents, assigns, insurers, re-insurers, of any of them.

14 **M. Resolution.** The terms "Agreement" or "Settlement Agreement" or "Resolution"
15 are used synonymously herein to mean this Stipulation of Resolution to resolve this Action.

16 **N. Settlement Administrator.** The term "Settlement Administrator" as used herein
17 means CPT Group, Inc., which will be responsible for claims administration.

18 **O. Settlement Agreement.** The terms "Agreement" or "Settlement Agreement" or
19 "Resolution" are used synonymously herein to mean this Stipulation of Resolution to resolve this
20 Action.

21 **P. Settlement Amount and Common Fund.** The terms "Settlement Amount" or
22 "Common Fund" as used synonymously herein to mean the non-reversionary sum of one million
23 eight hundred thousand dollars (\$1,800,000.00) which shall be paid by Defendants, and from
24 which all of the following shall be paid, except as provided herein:

- 25 ▪ Net Settlement Payments (see § 1.I above);
- 26 ▪ Court-approved attorneys' fees and costs pursuant to Section XI;
- 27 ▪ Administrative Costs pursuant to Section VII;
- 28 ▪ Enhancement payment to the Class Representative pursuant to Section XII;

1 and

- 2 ▪ Statutory penalties, interest, and payment to the State of California Labor
3 and Workforce Development Agency ("LWDA") under the Labor Code
4 Private Attorneys General Act ("PAGA") pursuant to Section XIV.

5 This is a non-reversionary common fund settlement; Defendants will not recoup any portion of
6 the Settlement Amount.

7 **Q. Settlement Class.** For settlement purposes only, the Parties agree to the
8 certification of a class pursuant to California Code of Civil Procedure section 382 defined as:

- 9 ▪ All persons who are or were employed by Defendants in the State of
10 California as non-exempt hourly employees at any time from October 1,
11 2015, and continuing through March 15, 2020.

12 **R. Settlement Period.** The term "Settlement Period" as used herein means the
13 period from October 1, 2015, and continuing through March 15, 2020.

14 **II. BACKGROUND**

15 **A.** Plaintiff filed this Action, as defined above, on behalf of himself and similarly-
16 situated persons, alleging the following claims: (1) failure to pay wages and overtime
17 compensation; (2) failure to pay minimum wage; (3) rest break liability under Labor Code section
18 226.7; (4) meal period liability under Labor Code section 226.7; (5) failure to reimburse business
19 expenses under Labor Code section 2802; (6) failure to timely pay wages due at termination or
20 resignation; (7) failure to provide accurate itemized employee wage statements; (8) violations of
21 Business & Professions Code section 17200, *et seq.*; and (9) penalties pursuant to California's
22 Private Attorneys General Act (Labor Code § 2698, *et seq.*).

23 **B.** Class Counsel commenced their investigation in August 2019, approximately
24 eight months prior to filing this Action. Class Counsel conducted discovery which yielded
25 information and documentation concerning the claims set forth in the Action, such as Defendants'
26 policies and procedures regarding the payment of wages, the provision of meal and rest breaks,
27 time keeping policies, including recording hours, issuance of wage statements, and providing all
28 wages at separation, as well as information regarding the number of Settlement Class Members

1 and the mix of current versus former employees, the average number of hours worked, the wage
2 rates in effect, and length of employment for the average Settlement Class Member.

3 C. Defendants produced a substantial amount of documentation for Settlement Class
4 Members, including time and pay records (*i.e.* wage statements, pay plans) and the employee
5 handbooks, as well as composite data for the Settlement Class. The Parties met and conferred at
6 length regarding the information and documents produced. Class Counsel analyzed the
7 documents produced by Defendants and Settlement Class Members in conjunction with
8 Settlement Class Member interviews to determine Defendants' degree of liability and amounts
9 due in damages.

10 D. Plaintiff and Class Counsel have engaged in good faith, arms-length negotiations
11 with Defendants concerning possible resolution of the claims asserted in the Action. The Parties
12 participated in mediation before the Honorable Peter D. Lichtman (Ret.). The Parties accepted
13 Judge Lichtman's mediator's proposal, resulting in a tentative settlement. The Parties have since
14 engaged in extensive negotiations about the terms and conditions of the settlement and now enter
15 into a more detailed, formalized settlement agreement for submission to the Court for approval.

16 E. Class Counsel have conducted an investigation of the law and facts relating to the
17 claims asserted in the Action and have concluded, taking into account the sharply-contested
18 issues involved, the expense and time necessary to pursue the matter through trial, the risks and
19 costs of further prosecution, the risk of an adverse outcome, the uncertainties of complex
20 litigation, and the substantial benefits to be received by the Plaintiff and Settlement Class
21 Members pursuant to this Agreement, that a settlement with Defendants on the terms and
22 conditions set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement
23 Class.

24 F. Defendants have concluded that, because of the substantial expense of defending
25 this action, the length of time necessary to resolve the issues presented herein, the inconvenience
26 involved, and the concomitant disruption to its business operations, it is in their best interests to
27 accept the terms of this Stipulation of Resolution. Defendants deny each of the allegations and
28 claims asserted against them in the Action. However, Defendants nevertheless desire to settle

1 the Action for the purpose of avoiding the burden, expense and uncertainty of continuing to
2 defend the Action and for the purpose of putting to rest the controversies engendered by further
3 litigation.

4 **G.** This Stipulation of Resolution is intended to and does effectuate the full, final and
5 complete resolution of all allegations and claims that were asserted, or could have been asserted
6 based on the facts alleged in the Action, by the Plaintiff and Settlement Class Members set forth
7 in Section II.A.

8 **III. STIPULATION OF CLASS CERTIFICATION**

9 The Parties stipulate to the certification of this Settlement Class and representative
10 action for settlement purposes only. This Stipulation of Resolution is contingent upon the
11 preliminary and final approval and certification of the Settlement Class only for purposes of
12 Resolution. Should the Resolution not become final, for whatever reason, the fact that the Parties
13 were willing to stipulate provisionally to class certification as part of the Resolution shall have
14 no bearing on, and shall not be admissible in connection with, the issue of whether a class should
15 be certified in a non-settlement context. Defendants expressly reserve the right to oppose class
16 certification and/or proactively move to preclude or deny certification should this Resolution be
17 reversed on appeal or otherwise not become final.

18 **IV. MOTION FOR PRELIMINARY APPROVAL**

19 Plaintiff will move, unopposed before the Court, for an order preliminarily
20 approving the Resolution including the Notice of Pendency of Class Action and Settlement
21 ("Notice") to current employees and former employees and Claim Form, which are attached
22 hereto as Exhibits "A" and "B," respectively, and including conditional certification of the
23 Settlement Class for settlement purposes only. Class Counsel will prepare the motion for
24 preliminary approval.

25 **V. STATEMENT OF NO ADMISSION**

26 **A.** Defendants deny liability to Plaintiff and to the Settlement Class upon any claim
27 or cause of action. This Agreement does not constitute, and is not intended to constitute, an
28

1 admission by Defendants as to the merits, validity, or accuracy of any of the allegations or claims
2 made against them in the Action.

3 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor
4 any statements, discussions or communications, nor any materials prepared, exchanged, issued
5 or used during the course of the negotiations leading to this Agreement or the Resolution, is
6 intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be
7 used or be admissible in any way in this case or any other judicial, arbitral, administrative,
8 investigative or other forum or proceeding as evidence of any violation of any federal, state, or
9 local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law
10 or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly
11 or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other
12 forum or proceeding, as purported evidence of any violation of any federal, state, or local law,
13 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in
14 equity. Notwithstanding the foregoing, this Agreement may be used in any proceeding before
15 the Court that has as its purpose the interpretation, implementation, or enforcement of this
16 Agreement or any orders the Court entered in connection with the Resolution.

17 **C.** None of the documents, statements, or other information produced or created by
18 Plaintiff or the Settlement Class in connection with the claims procedures or claims resolution
19 procedures constitute, and they are not intended to constitute, an admission by Defendants of any
20 violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order,
21 or any obligation or duty at law or in equity.

22 **D.** The Parties agree that class certification pursuant to California Code of Civil
23 Procedure section 382 under the terms of this Agreement is for settlement purposes only.

24 **E.** Nothing in this Agreement nor the Court's actions with regard to this Agreement
25 will be construed as an admission or acknowledgement of any kind by Defendants that
26 certification, consolidation or joinder of other claims or controversies, class action, collective
27 action, representative action, private attorney general action, or any other similar action is
28 appropriate in any other action or proceeding.

1 F. Defendants expressly reserve the right to enforce any class action waivers and any
2 provisions disallowing or prohibiting the consolidation or joinder of other claims or
3 controversies, preventing claims or controversies to proceed as a class action, collective action,
4 private attorney general action, or any other similar action.

5 **VI. RELEASE**

6 **A. Release as to Settlement Class Members.**

7 Upon the date the Court makes the award granting final approval of the settlement,
8 for the period from October 1, 2015 through March 15, 2020, Plaintiff and Settlement Class
9 Members, except those that make a valid and timely request to be excluded from the Settlement
10 Class, waive, release, discharge, and promise never to assert in any forum any and all wage-
11 related claims against Defendants, their respective subsidiaries, affiliates, predecessors or
12 successors in interest, or the officers, directors, shareholders, employees, attorneys, agents,
13 assigns, insurers, re-insurers, of any of them, (collectively, "Released Parties"), that were
14 asserted, or could have been asserted based on the facts alleged in the Action, including but not
15 limited to: (1) failure to pay wages and overtime compensation; (2) failure to pay minimum wage;
16 (3) rest break liability under Labor Code section 226.7; (4) meal period liability under Labor
17 Code section 226.7; (5) failure to reimburse business expenses under Labor Code section 2802;
18 (6) failure to timely pay wages due at termination or resignation; (7) failure to provide accurate
19 itemized employee wage statements; (8) violations of Business & Professions Code section
20 17200, *et seq.*; and (9) penalties pursuant to California's Private Attorneys General Act (Labor
21 Code § 2698, *et seq.*) based on the foregoing facts and claims (collectively, "Released Claims").

22 **B. General Release by Plaintiff Only.**

23 In addition to the release made in Section VI.A, Plaintiff makes the additional
24 following general release of all claims, known or unknown. Plaintiff releases Defendants and all
25 additional Released Parties (as defined above at Section I.L), for the period from October 1, 2015
26 through March 15, 2020, from all claims, demands, rights, liabilities and causes of action of every
27 nature and description whatsoever, known or unknown, asserted or that might have been asserted,
28 whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising

1 out of, relating to, or in connection with any act or omission by or on the part of any of the
2 Defendants. (The release set forth in this Paragraph shall be referred to hereinafter as the
3 "General Release.")

4 With respect to the General Release, Plaintiff stipulates and agrees that upon the
5 date the Court grants final approval Plaintiff shall be deemed to have, expressly waived and
6 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of section
7 1542 of the California Civil Code, or any other similar provision under federal or state law, which
8 provides:

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

16 Accordingly, if the facts relating in any manner to this Resolution are found hereafter to be other
17 than or different from the facts now believed to be true, the release of claims contained herein
18 shall be effective as to all unknown claims.

19 VII. SETTLEMENT ADMINISTRATOR

20 Plaintiff and Defendants, through their respective counsel, have selected CPT
21 Group, Inc. as the Settlement Administrator to administer the Resolution, which includes, but is
22 not limited to, distributing and responding to inquiries about the Notice and Claim Form,
23 determining the validity of the Claim Forms and opt-outs and calculating all amounts to be paid
24 from the Settlement Amount. Any charges and expenses of the Settlement Administrator, not to
25 exceed \$25,000, will be paid from the Settlement Amount.

26 VIII. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS

27 A. Notice.

28 Plaintiff and Defendants, through their respective attorneys, have jointly prepared
the Notice to current and former employees and Claim Form, which in substance will be provided
to Settlement Class Members as follows:

///

1 As soon as practicable following preliminary approval of the Resolution, but no
2 later than ten (10) calendar days after the Court's preliminary approval award, Defendants will
3 provide to the Settlement Administrator the following information about each Settlement Class
4 Member ("Class List"): (1) name; (2) last known mailing address; (3) dates of employment as a
5 Settlement Class Member during the Settlement Period; (4) social security number, and (5)
6 telephone number. Defendants further agree to consult with the Settlement Administrator prior
7 to the production date to ensure that the format will be acceptable to the Settlement
8 Administrator.

9 The Settlement Administrator shall run all the addresses provided through the
10 United States Postal Service National Change of Address (NCOA) database (which provides
11 updated addresses for any individual who has moved in the previous four years and who has
12 notified the U.S. Postal Service of a forwarding address) to obtain current address information,
13 and shall mail the Notice and, if applicable, the Claim Form, to Settlement Class Members via
14 first-class U.S. Mail using the most current mailing address information available within twenty
15 (20) calendar days of the preliminary approval date.

16 If a Notice is returned from the initial notice mailing, the Settlement Administrator
17 will submit the applicable and available information, including name, Social Security number,
18 and original mailing address, to a company that specializes in address skip tracing to attempt to
19 locate a more current address. If the Settlement Administrator is successful in locating a new
20 address, it will re-mail the Notice and, if applicable, the Claim Form to the Settlement Class
21 Member. Further, any Notices returned with a forwarding address to the Settlement
22 Administrator, as non-deliverable before the deadline date, shall be sent to the forwarding address
23 affixed thereto. Upon completion of these steps by the Settlement Administrator, the Parties and
24 the Settlement Administrator shall be deemed to have satisfied their obligations to provide the
25 Notice to the Settlement Class.

26 The Notice will also include information regarding the nature of the Action, a
27 summary of the terms of the Resolution, the definition of the Settlement Class, a statement that
28 the Court has preliminarily approved the Resolution, the procedure and time period for

1 submitting a Claim Form, where applicable, objecting to the Resolution, opting out of the
2 Settlement Class, and the date and location of the final approval hearing. The Notice shall
3 provide Settlement Class Members forty-five (45) calendar days' notice of all applicable dates
4 and deadlines.

5 Payments to the Settlement Class will be determined on a claims-made basis for
6 former employees and will be automatically paid to all current employees. Each former
7 employee Settlement Class Member who submits a timely and valid Claim Form (enclosed with
8 the Notice) will be paid a percentage of the Net Settlement Amount based upon the number of
9 weeks he or she worked during the Settlement Period. See Section IX.A. Each current employee
10 Settlement Class Member will be paid a percentage of the Net Settlement Amount based upon
11 the number of weeks he or she worked during the Settlement Period automatically, without the
12 need to submit a Claim Form. The Notice provided to current employee Settlement Class
13 Members shall disclose his or her estimated individual settlement payment from the Net
14 Settlement Amount, as well as Defendants' calculation of the number of workweeks that he or
15 she worked during the Settlement Period ("Eligible Workweeks"). The Claim Form mailed to
16 each former employee Settlement Class Member shall disclose his or her estimated individual
17 settlement payment from the Net Settlement Amount, as well as Defendants' calculation of the
18 number of Eligible Workweeks.

19 The pre-printed information based on Defendants' records shall be presumed to
20 be correct. Settlement Class Members may dispute the number of Eligible Workweeks set forth
21 in the Notice/Claim Form no later than forty-five (45) calendar days after the date the Settlement
22 Administrator initially mails the Notice to the Settlement Class. If a Settlement Class Member
23 disputes the number of Eligible Workweeks, he or she must follow the directions in the Claim
24 Form and/or Notice. The Settlement Class Member disputing the number of his or her Eligible
25 Workweeks must prepare a statement setting forth the number of Eligible Workweeks he or she
26 believes in good faith to be correct, stating that he or she authorizes the Settlement Administrator
27 to review his or her personnel file to determine such information, and attach any relevant
28 documentation in support thereof. The Settlement Class Member must mail the signed and

1 completed statement along with documentation no later than forty-five (45) calendar days after
2 the date of the mailing of the Notice.

3 Upon timely receipt of any such challenge, the Settlement Administrator, in
4 consultation with Class Counsel and counsel for Defendants, will review the information and
5 documentary evidence provided by the Settlement Class Member, as well as pertinent payroll
6 records in his or her personnel file.

7 The Settlement Administrator's decision as to the number of Eligible Workweeks
8 shall be final and non-appealable. The Settlement Administrator shall send written notice of the
9 decision on any such claim to the Settlement Class Member, to Class Counsel, and counsel for
10 Defendants within ten (10) calendar days of receipt of the dispute.

11 For a former employee Settlement Class Member to receive an individual
12 settlement payment from the Net Settlement Amount, his or her Claim Form must be signed by
13 the Settlement Class Member or his or her authorized representative and the Claim Form must
14 be returned by mail to the Settlement Administrator no later than forty-five (45) calendar days
15 after the date the Settlement Administrator initially mails the Claim Forms to former employee
16 Settlement Class Members. If a former employee Settlement Class Member fails to submit a
17 timely and valid Claim Form, then he or she will not receive an individual settlement payment
18 from the Net Settlement Amount and will have extinguished the right to pursue the Released
19 Claims. Current employee Settlement Class Members will receive an individual settlement
20 payment from the Net Settlement Amount automatically, without the need to submit a Claim
21 Form, unless they chose to exercise their rights to be excluded from the Settlement Class, and
22 will have also extinguished the right to pursue the Released Claims.

23 Provided the Settlement Administrator mailed the Notice to a Settlement Class
24 Member as set forth in this Section, the deadlines set forth herein to submit a Claim Form shall
25 apply notwithstanding assertion by any former employee Settlement Class Member of non-
26 receipt of the Notice.

27 Should any former employee Settlement Class Member timely submit a Claim
28 Form with a deficiency, the Settlement Administrator shall, within five (5) calendar days of

1 receipt by the Settlement Administrator of each timely submitted Claim Form, send a deficiency
2 notice. The deficiency notice will provide the former employee Settlement Class Member no
3 more than ten (10) calendar days from the mailing of the deficiency notice to postmark a written
4 response to cure all deficiencies. The failure of a former employee Settlement Class Member to
5 timely submit a Claim Form or timely respond to a notice of deficiency shall invalidate that claim
6 unless all Parties' counsel agree to allow the claim.

7 No later than twenty (20) business days prior to the final approval hearing, the
8 Settlement Administrator shall provide counsel for Defendants and Class Counsel with a
9 declaration attesting to the completion of the Notice process, including the number of attempts
10 to obtain valid mailing addresses for and re-sending of any returned Notices, as well as the
11 number of valid Claim Forms, opt-outs, and deficiencies which the Settlement Administrator
12 received.

13 The Settlement Administrator will not provide information by which a
14 participating Settlement Class Member might be identified; except for good cause shown (such
15 as enforcement of a release), the identity of participating Settlement Class Members receiving
16 settlement payments will not be disclosed to the Defendants.

17 **B. Objections.**

18 In order for any Settlement Class Member to object to this Resolution, or any term of it,
19 the person making the objection must not submit a request for exclusion (*i.e.*, must not opt out,
20 as described below in Section VIII.C) and must, by no later than forty-five (45) calendar days
21 after the Notice was initially mailed to the Settlement Class, submit to the Settlement
22 Administrator and serve on Class Counsel and counsel for Defendants a written statement of the
23 grounds of objection, signed by the objecting Settlement Class Member or his or her attorney,
24 along with all supporting papers. All such objections and written notices of intention to appear
25 must be signed and must contain the Settlement Class Member's current address and the address
26 of counsel, if any. The objection should clearly explain why the Settlement Class Member
27 objects to the Resolution and state whether the Settlement Class Member (or someone on his or
28 her behalf) intends to appear at the final approval hearing. Plaintiff and Defendants will be

1 permitted to respond in writing to such objections no later than seven (7) calendar days before
2 the final approval hearing. If a Settlement Class Member submits a timely and complete
3 objection and written notice of intention to appear, he or she may appear personally or through
4 an attorney, at his or her own expense, at the final approval hearing to present his or her objection
5 directly to the Court. Any attorney who will represent an individual objecting to this Resolution
6 must file a notice of appearance with the Court and serve Class Counsel and Defendants' Counsel
7 no later than forty-five (45) calendar days after the Notice was initially mailed to the Settlement
8 Class. If a Settlement Class Member objects to this Resolution, he or she will remain a member
9 of the Settlement Class and if the Court approves this Agreement, the Settlement Class Member
10 will be bound by the terms of the Resolution and final approval in the same way and to the same
11 extent as a Settlement Class Member who does not object. The date of mailing of the Notice to
12 the objecting Settlement Class Member shall be conclusively determined according to the records
13 of the Settlement Administrator. The Court retains final authority with respect to the
14 consideration and admissibility of any Settlement Class Member objections. Any Settlement
15 Class Member who submits an objection may also submit a Claim Form but must do so on a
16 timely basis in order for it to be valid. Provided the Settlement Administrator mailed the Notice
17 to a Settlement Class Member as set forth in Paragraph VIII.A., the deadlines set forth herein to
18 file an objection shall apply notwithstanding assertion by any Settlement Class Member of non-
19 receipt of the Notice.

20 Plaintiff waives any right to object to the Resolution, and hereby endorses the
21 Resolution as fair, reasonable and adequate and in the best interests of the Settlement Class.

22 **C. Opportunity to Be Excluded.**

23 In order for any Settlement Class Member to validly exclude himself or herself
24 from the Settlement Class and this Resolution (*i.e.*, to validly opt out), a written request for
25 exclusion ("Request to be Excluded") must be signed by the Settlement Class Member or his or
26 her authorized representative and must be sent to the Settlement Administrator, postmarked by
27 no later than forty-five (45) calendar days after the date the Settlement Administrator initially
28

1 mails the Notice to the Settlement Class. The Notice shall contain instructions on how to opt
2 out.

3 The date of the initial mailing of the Notice, and the date the signed Request to be
4 Excluded was postmarked, shall be conclusively determined according to the records of the
5 Settlement Administrator. Any Settlement Class Member who timely and validly submits a
6 Request to be Excluded from the Settlement Class and this Resolution will not be entitled to any
7 individual settlement payment, will not be bound by the terms and conditions of this Resolution,
8 and will not have any right to object, appeal, or comment thereon.

9 Settlement Class Members who submit valid and timely Requests to be Excluded
10 will not reduce the Settlement Amount nor the Net Settlement Amount; their individual
11 settlement payments will remain a part of the Net Settlement Amount for distribution to
12 participating Settlement Class Members on a *pro rata* basis.

13 In the event a Settlement Class Member returns both a valid and timely Claim
14 Form and a Request to be Excluded, the Request to be Excluded will be deemed void, and of no
15 force and effect, while the Claim Form will be processed pursuant to the terms of the Resolution.
16 Any Settlement Class Member who does not timely submit valid Request to be Excluded from
17 the Settlement Class will be deemed included in the Settlement Class in accordance with this
18 Resolution.

19 Any Settlement Class Member who does not timely submit a valid Request to be
20 Excluded from the Settlement Class will be deemed included in the Settlement Class in
21 accordance with this Resolution.

22 Plaintiff waives any right to be excluded from the Settlement Class.

23 **D. Right of Defendants to Reject Settlement.**

24 If five percent (5%) or more of Settlement Class Members who have not
25 separately settled their Released Claims timely submit valid Requests to be Excluded, Defendants
26 will have the right, but not the obligation, to void the settlement and the Parties will have no
27 further obligations under the settlement, including any obligation by Defendants to pay the
28 Settlement Amount, or any amounts that otherwise would have been owed under this Agreement,

1 except that Defendants will pay the Settlement Administrator's reasonable fees and expenses
2 incurred as of the date that Defendants exercise their right to void the settlement. Defendants
3 will notify Class Counsel and the Court whether they are exercising this right to void not later
4 than seven (7) days after the Settlement Administrator notifies the Parties of the final number of
5 valid Requests to be Excluded.

6 **E. Cooperation.**

7 The Parties or their counsel shall not seek to solicit or otherwise encourage any
8 Settlement Class Member to refrain from participating in the settlement, to object to the
9 settlement or opt out of the Settlement Class. However, if a Settlement Class Member contacts
10 Class Counsel, Class Counsel may discuss the terms of the Resolution and the Settlement Class
11 Member's options.

12 **IX. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

13 **A. Distribution Formula.**

14 Net Settlement Payments will be distributed to former employee Settlement Class
15 Members who submit timely and valid Claim Forms and to all current employee Settlement Class
16 Members. Net Settlement Payments will be paid out of the Net Settlement Amount. Payments
17 to former employee Settlement Class Members will be made on a claims-made basis; each former
18 employee Settlement Class Member who submits a timely and valid Claim Form will be paid a
19 percentage of the Net Settlement Amount based upon his or her Eligible Workweeks during the
20 Settlement Period. Each current employee Settlement Class Members who does not submit a
21 valid and timely Request to be Excluded will be paid a percentage of the Net Settlement Amount
22 based upon his or her Eligible Workweeks during the Settlement Period without the need to
23 submit a Claim Form.

24 Each Net Settlement Payment will be determined by dividing the Net Settlement
25 Amount by the total number of Eligible Workweeks worked by all Settlement Class Members
26 during the Settlement Period (the "Weekly Amount") and then multiplying the Weekly Amount
27 by the number of Eligible Workweeks of the individual Settlement Class Member as determined
28

1 by the Settlement Administrator, less any applicable withholding taxes based on the Parties'
2 stipulated allocation of the Net Settlement Amount as provided for in Section XIII.A below.

3 If Settlement Class Members claim less than the Net Settlement Amount, then the
4 difference between the claimed amount and the Net Settlement Amount shall be distributed on a
5 *pro rata* basis to such participating Settlement Class Members.

6 **B. Time for Distribution.**

7 Defendants shall fund the settlement in its entirety with the Settlement
8 Administrator within five (5) business following the Court's final approval award. The
9 Settlement Administrator shall cause the Net Settlement Payments, Court-approved enhancement
10 payment to the Class Representative, Court-approved attorneys' fees and costs, and PAGA
11 Settlement to be mailed within fifteen (15) business days following the Court's final approval
12 award, subject to the provisions, conditions and limitations in Section XV.

13 **X. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

14 The amounts paid under this Agreement do not represent a modification of any
15 previously credited hours of service under any employee benefit plan, policy or bonus program
16 sponsored by Defendants. Such amounts will not form the basis for additional contributions to,
17 benefits under, or any other monetary entitlement under, benefit plans (self-insured or not)
18 sponsored by Defendants, policies or bonus programs. Any payments made under the terms of
19 this Resolution shall not be applied retroactively, currently or on a going forward basis as salary,
20 earnings, wages, or any other form of compensation for the purposes of Defendants' benefit plan,
21 policy or bonus program. Defendants retain the right to modify the language of its benefit plans,
22 policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant
23 to this Resolution are not for "hours worked," "hours paid," "hours of service," or any similar
24 measuring term as defined by applicable plans, policies and bonus programs for purpose of
25 eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or
26 benefits are not required by this Resolution.

27 **XI. ATTORNEYS' FEES AND COSTS**

28 Defendants shall not oppose an application by Class Counsel for, and Class

1 Counsel shall not seek or receive, an amount in excess of 33-1/3 percent of the Settlement
2 Amount for all past and future attorneys' fees necessary to prosecute, settle and administer this
3 action. Additionally, Defendants shall not oppose an application by Class Counsel for, and Class
4 Counsel shall not seek or receive, an amount in excess of \$15,000, which represents all past and
5 future costs and expenses necessary to prosecute, settle and administer this Action. Any
6 attorneys' fees or costs awarded to Class Counsel by the Court shall be deducted from the
7 Settlement Amount for the purpose of determining the Net Settlement Amount.

8 **XII. ENHANCEMENT PAYMENT TO PLAINTIFF**

9 Defendants shall not oppose an application by Plaintiff for his participation in and
10 assistance with the Action. Plaintiff shall not seek or receive an amount in excess of \$10,000.
11 Any enhancement payment awarded by the Court shall be deducted from the Settlement Amount
12 for the purpose of determining the Net Settlement Amount, and shall be reported on IRS Form
13 1099.

14 **XIII. TAXATION AND ALLOCATION**

15 **A. Allocation and Withholdings**

16 The Parties agree that all employment taxes and other legally required
17 withholdings, other than Employer Taxes, will be withheld from payments to Settlement Class
18 Members and Plaintiff based on the Parties stipulated allocation of the Net Settlement Amount
19 as provided for in this Section.

20 The amount of federal income tax withholding will be based upon a flat
21 withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-
22 1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to
23 applicable state and/or local withholding codes or regulations.

24 For withholding tax characterization purposes and payment of taxes, the Net
25 Settlement Amount due to each Settlement Class Member shall be deemed and is allocated by
26 the Parties as follows ("Net Settlement Allocation"):

- 27 ▫ 30% as wages; and
- 28 ▫ 70% as penalties and interest.

1 IRS Forms W-2 and/or 1099-MISC will be distributed at times and in the manner required by
2 the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code,
3 the regulations promulgated thereunder, or other applicable tax law, is changed after the date of
4 this Agreement, the processes set forth in this Section may be modified in a manner to bring
5 Defendants into compliance with any such changes.

6 The Settlement Administrator will calculate and administer the payment of any
7 and all employment taxes (including Employer Taxes) that are triggered based on the payments
8 described herein. The Employer Taxes will be funded separately by Defendants (i.e., outside of
9 the Settlement Amount), while all other taxes will be paid from the Settlement Amount.

10 **B. Circular 230 Disclaimer.**

11 EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS
12 SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
13 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
14 PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES
15 THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO
16 WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
17 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER
18 ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
19 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
20 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
21 THE MEANING OF UNITED STATES TREASURY DEPARTMENT
22 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
23 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
24 UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
25 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
26 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED
27 INTO THIS AGREEMENT BASED UPON THE
28 RECOMMENDATION OF ANY OTHER PARTY OR ANY
ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS
NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER
PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED
ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR
ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY
LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES
(REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY
BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING
PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
TRANSACTION, INCLUDING ANY TRANSACTION
CONTEMPLATED BY THIS AGREEMENT.

1 **XIV. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION**

2 In order to implement the terms of this Resolution and to settle claims alleged
3 under the Private Attorneys General Act, California Labor Code section 2698, *et seq.*, the Parties
4 agree to allocate Forty Thousand Dollars and Zero Cents (\$40,000) of the Settlement Amount as
5 the PAGA Settlement. Seventy-five percent (75%), is to be paid by Defendants, through the
6 Settlement Administrator, to the California Labor and Workforce Development Agency
7 ("LWDA"), and the remaining twenty-five percent (25%) is to be part of the Net Settlement
8 Amount available to the Settlement Class.

9 Settlement Administrator shall be responsible for any and all disbursements to the
10 LWDA in connection with this allocation that may be necessary to effect a full and complete
11 release of all claims contemplated by this Agreement.

12 **XV. COURT APPROVAL**

13 This Agreement and the Resolution is contingent upon final approval of the
14 Stipulation of Resolution by the Court. Plaintiff and Defendants agree to take all steps as may
15 be reasonably necessary to secure both preliminary approval and final approval of the Resolution,
16 to the extent not inconsistent with the terms of this Agreement, and will not take any action
17 adverse to each other in obtaining Court approval. Plaintiff and Defendants expressly agree that
18 they will not file any objection to the terms of this Stipulation of Resolution or assist or encourage
19 any person or entity to file any such objection.

20 **XVI. MISCELLANEOUS PROVISIONS**

21 **A. Fair Settlement.**

22 The Parties and their respective counsel believe and warrant that this Agreement
23 reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this
24 Agreement through arms-length negotiations with the assistance of a Retired Judge as mediator,
25 and pursuant to a mediator's proposal, taking into account all relevant factors, current and
26 potential.

27 ///

28 ///

1 **B. Interpretation of the Agreement.**

2 This Agreement constitutes the entire agreement between the Parties. Except as
3 expressly provided herein, this Agreement has not been executed in reliance upon any other
4 written or oral representations or terms, and no such extrinsic oral or written representations or
5 terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree
6 that this Agreement is to be construed according to its terms and may not be varied or contradicted
7 by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the
8 State of California, both in its procedural and substantive aspects, without regard to its conflict
9 of laws provisions. Plaintiff, on his own behalf and on behalf of the Settlement Class, and
10 Defendants participated in the negotiation and drafting of this Agreement and had available to
11 them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendants
12 may claim that any ambiguity in this Agreement should be construed against the other.

13 The terms and conditions of this Agreement constitute the exclusive and final
14 understanding and expression of all agreements between Plaintiff and Defendants with respect
15 to the Resolution of the Action. The Agreement may be modified only by a writing signed by
16 the original signatories and approved by the Court.

17 **C. Further Cooperation.**

18 Plaintiff and Defendants and their respective attorneys shall proceed diligently to
19 prepare and execute all documents, to seek the necessary approval from the Court, and to do all
20 things reasonably necessary or convenient to consummate the Agreement as expeditiously as
21 possible.

22 **D. Enforcement.**

23 In the event that one or more of the Parties to this Agreement institutes any legal
24 action or other proceeding against any other party or parties to enforce the provisions of this
25 Resolution or to declare rights and/or obligations under this Agreement, the successful party or
26 parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'
27 fees and costs incurred in connection with any enforcement actions.

28 ///

1 **E. Counterparts.**

2 The Agreement may be executed in one or more actual or non-original
3 counterparts, all of which will be considered one and the same instrument and all of which will
4 be considered duplicate originals.

5 **F. No Third Party Beneficiaries.**

6 Plaintiff, Settlement Class Members, and Defendants are each direct beneficiaries
7 of this Agreement, but there are no third party beneficiaries.

8 **G. Binding on Assigns.**

9 This Agreement shall be binding upon and inure to the benefit of the Parties hereto
10 and their respective heirs, trustees, executors, administrators, successors, assigns, predecessors,
11 successors, shareholders, officers, directors, employees, agents, trustees, representatives,
12 administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries,
13 insurers, affiliates, and privies, and upon Settlement Class Members who do not opt out of the
14 settlement agreed to in this Resolution.

15 **H. Force Majeure.**

16 The failure of any party to perform any of its obligations hereunder shall not
17 subject such party to any liability or remedy for damages, or otherwise, where such failure is
18 occasioned in whole or in part by acts of God, fires, accidents, earthquakes, other natural
19 disasters, explosions, floods, wars, interruptions or delays in transportation, power outages, labor
20 disputes or shortages, shortages of material or supplies, governmental laws, restrictions, rules or
21 regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any other similar
22 or different circumstances or causes beyond the reasonable control of such party.

23 **I. Other Actions Enjoined.**

24 Defendants shall have the right to request that the Court enter an order that,
25 pending final approval, Settlement Class Members who do not opt out of the settlement are barred
26 from instituting or prosecuting any claims or actions against the Defendants which fall within the
27 scope of the release herein and that any pending actions against the Defendants are stayed on an
28 interim basis as to any claims which fall within the scope of the release herein.

1 **J. Deadlines Falling on Weekends or Holidays.**

2 To the extent that any deadline set forth in this Agreement falls on a Saturday,
3 Sunday, or legal holiday, that deadline shall be continued until the following business day.

4 **K. Severability.**

5 In the event that any one or more of the provisions contained in this Agreement
6 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
7 illegality, or unenforceability shall in no way affect any other provision if Defendants' counsel
8 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to
9 proceed as if such invalid, illegal, or unenforceable provision had never been included in this
10 Agreement.

11 **L. Governing Law, Jurisdiction, and Venue.**

12 This Stipulation of Resolution shall be governed by, and construed in accordance
13 with, the laws of the State of California. The Parties agree and consent to the exclusive
14 jurisdiction of the courts of the State of California for all purposes regarding this Stipulation of
15 Resolution and further agree and consent that venue of any action brought or subject to resolution
16 hereunder shall be exclusively in the County of San Bernardino.

17 **M. Notices to Counsel.**

18 All notices, requests, demands and other communications required or permitted
19 to be given pursuant to this Agreement shall be in writing and shall be delivered personally or
20 mailed, postage prepaid, by first-class United States mail, to the undersigned persons at their
21 respective addresses as set forth herein:

22

Class Counsel:	Counsel for Defendants:
Anthony J. Orshansky Justin Kachadoorian COUNSELONE, PC 9301 Wilshire Boulevard, Suite 650 Beverly Hills, California 90210	Tyler T. Rasmussen Mark J. Jacobs FISHER & PHILLIPS LLP 2050 Main Street, Suite 1000 Irvine, California 92614

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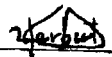
1 N. **Authority.**

2 Each individual signing below warrants that he or she has the authority to execute
3 this Agreement on behalf of the party for whom or which that individual signs.

4 **IN WITNESS WHEREOF**, the Parties hereto knowingly and voluntarily
5 executed this Stipulation of Resolution as of the date(s) set forth below:

6 05 / 15 / 2020
7 Date: April _____, 2020

8
9 By:


Herbert Hurtado

10
11 Date: April _____, 2020

12 Defendants

13 By:

14 Name:

15 For J. McCullough Corp. dba Oremor
16 Automotive Group, a California
17 corporation; Oremor of Fresno, Inc. dba
18 Fresno Lexus, a California corporation;
19 Oremor of Glendale LLC dba Toyota of
20 Glendale, a California company; Oremor
21 of Riverside, LLC dba BMW of Riverside,
22 a California company; Oremor of
23 Riverside II, LLC dba Infiniti of Riverside,
24 a California company; Oremor of
25 Riverside RC, LLC dba Riverside
26 Chevrolet, a California company; Oremor
27 of Temecula, LLC dba Temecula Valley
28 Toyota, a California company; Oremor of
Tustin, Inc. dba Tustin Toyota, a
California corporation; Oremor European,
LLC dba Mercedes Benz of El Cajon, a
California company; United Recovery,
Inc., a California corporation; Oremor of
Italy, Inc. dba Fiat of Ontario, a California
corporation; Oremor of Italy II, LLC dba
Maserati & Alfa Romeo of Ontario, a
California company; Oremor of Woodland
Hills LLC dba Lexus of Woodland Hills, a
California company; Aquirecorp's
Norwalk Auto Auction dba Norwalk Auto
Auction, a California corporation; Jeep
Chrysler of Ontario, Inc. dba Jeep Chrysler
Dodge Ram Fiat, Dodge of Ontario, a
California corporation; Romero Motors

Corporation dba Ontario Hyundai Mazda,
a California corporation; Empire Nissan,
Inc., a California corporation

APPROVED AS TO FORM:

Date: May 15, 2020

COUNSELONE, P.C.

By: 
Anthony J. Orshansky
Justin Kachadoorian
Attorneys for Plaintiff and the Settlement
Class

Date: June 3, 2020

FISHER PHILLIPS LLP

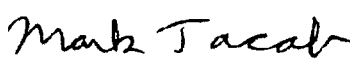
By: 
Mark J. Jacobs
Tyler T. Rasmussen
Attorneys for Defendants J. McCullough
Corp. dba Oremor Automotive Group, a
California corporation; Oremor of Fresno,
Inc. dba Fresno Lexus, a California
corporation; Oremor of Glendale LLC dba
Toyota of Glendale, a California company;
Oremor of Riverside, LLC dba BMW of
Riverside, a California company; Oremor of
Riverside II, LLC dba Infiniti of Riverside, a
California company; Oremor of Riverside
RC, LLC dba Riverside Chevrolet, a
California company; Oremor of Temecula,
LLC dba Temecula Valley Toyota, a
California company; Oremor of Tustin, Inc.
dba Tustin Toyota, a California corporation;
Oremor European, LLC dba Mercedes Benz
of El Cajon, a California company; United
Recovery, Inc., a California corporation;
Oremor of Italy, Inc. dba Fiat of Ontario, a
California corporation; Oremor of Italy II,
LLC dba Maserati & Alfa Romeo of
Ontario, a California company; Oremor of
Woodland Hills LLC dba Lexus of
Woodland Hills, a California company;
Aquirecorp's Norwalk Auto Auction dba
Norwalk Auto Auction, a California
corporation; Jeep Chrysler of Ontario, Inc.
dba Jeep Chrysler Dodge Ram Fiat, Dodge
of Ontario, a California corporation; Romero
Motors Corporation dba Ontario Hyundai
Mazda, a California corporation; Empire
Nissan, Inc., a California corporation

EXHIBIT A

NOTICE OF PENDENCY OF CLASS ACTION AND SETTLEMENT FOR CURRENT EMPLOYEES

Oremor Automotive Group Class Action Settlement
San Bernardino Superior Court, Case No. CIVDS2006540

The Honorable David Cohn authorized this notice. This is not a solicitation from a lawyer.

To: All persons who are or were employed by Oremor Automotive Group (hereinafter “OAG” and as further as defined in Paragraph 2 below) in the State of California as non-exempt hourly employees at any time from October 1, 2015, and continuing through March 15, 2020 (the “Settlement Class” or “Settlement Class Members”).

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY. YOU MAY BE ENTITLED TO RECEIVE MONEY UNDER THIS SETTLEMENT UNLESS YOU OPT OUT OF THE SETTLEMENT, AS DISCUSSED BELOW.

You are receiving this Notice because the Court has granted preliminary approval of a settlement (the “Stipulation of Resolution”) in a class action on behalf of current and former employees of OAG. The class action is referred to in this Notice as “the Action.” The settlement will resolve specific claims, discussed herein, against OAG. A hearing addressing the fairness, adequacy and reasonableness of the settlement will be held on _____, 2020 to determine whether the settlement should receive the Court’s final approval.

1. PURPOSE OF THIS NOTICE

- The Court has ordered that this Notice be sent to you because you have been identified as a potential member of the settlement class. The settlement class (“Settlement Class”) is defined as follows: All persons who are or were employed by OAG (at one or more of the dealerships listed below) in the State of California as non-exempt hourly employees at any time from October 1, 2015, and continuing through March 15, 2020.
- The purpose of this Notice is to: (a) provide a brief description of the Action; (b) inform you of the settlement; and (c) discuss your rights and options with respect to the Action and the settlement.

2. DESCRIPTION OF THE ACTION

- A former employee (“Plaintiff”) instituted the Action on behalf of himself and similarly-situated persons, alleging that OAG failed to pay the Settlement Class all wages and overtime, failed to pay the applicable minimum wage, failed to provide compliant meal and rest breaks, failed to reimburse business expenses, failed to provide accurate itemized wage statements, and failed to provide full wages to employees upon termination and/or resignation. Moreover, the Action alleges, based on the foregoing allegations, that OAG engaged in unfair business practices under California’s Business and Professions Code section 17200, *et seq.* and violated California’s Private Attorneys General Act (“PAGA”), Labor Code section 2698, *et seq.*
- **OAG denies liability and maintains that it has fully complied with California’s wage and hour laws. OAG contends that this settlement was established specifically to avoid the cost of further litigation.**
- OAG operates automobile dealerships in California under several legal entities including J. McCullough Corp. dba Oremor Automotive Group, a California corporation; Oremor of Fresno, Inc. dba Fresno Lexus, a California corporation; Oremor of Glendale LLC dba Toyota of Glendale, a California company; Oremor of Riverside, LLC dba BMW of Riverside, a California company; Oremor of Riverside II, LLC dba Infiniti of Riverside, a California company; Oremor of Riverside RC, LLC dba Riverside Chevrolet, a California company; Oremor of Temecula, LLC dba Temecula Valley Toyota, a California company; Oremor of Tustin, Inc. dba Tustin Toyota, a California corporation; Oremor European, LLC dba Mercedes Benz of El Cajon, a California company; United Recovery, Inc., a California corporation; Oremor of Italy, Inc. dba Fiat of Ontario, a California corporation; Oremor of Italy II, LLC dba Maserati & Alfa Romeo of Ontario, a California company; Oremor of Woodland

Hills LLC dba Lexus of Woodland Hills, a California company; Aquirecorp's Norwalk Auto Auction dba Norwalk Auto Auction, a California corporation; Jeep Chrysler of Ontario, Inc. dba Jeep Chrysler Dodge Ram Fiat, Dodge of Ontario, a California corporation; Romero Motors Corporation dba Ontario Hyundai Mazda, a California corporation; and Empire Nissan, Inc., a California corporation (collectively, "OAG").

The Court has made no ruling on the merits of Plaintiff's claims or the defenses asserted by OAG. The Court has preliminarily approved the settlement. The Court will decide whether to grant final approval to the settlement at a hearing scheduled for _____, 2020.

3. WHO ARE THE ATTORNEYS REPRESENTING THE PARTIES?

Attorneys for Plaintiff and the Settlement Class ("Class Counsel"):

Anthony J. Orshansky, Esq.
Justin Kachadoorian, Esq.
Jennifer L. Connor, Esq.
COUNSELONE, P.C.
9301 Wilshire Boulevard, Suite 650
Beverly Hills, California 90210
Telephone: (310) 277-9945

Attorneys for OAG:

Mark J. Jacobs, Esq.
John M. Polson, Esq.
FISHER PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614
Telephone: (949) 851-2424

4. TERMS OF THE SETTLEMENT

OAG has agreed to pay \$1,800,000 under the settlement. This amount is called the Settlement Amount. The Settlement Amount will be used to cover payments to members of the Settlement Class, settlement administration costs, attorneys' fees and costs, the enhancement award, and payment to the California Labor and Workforce Development Agency for the claimed violations of the Private Attorneys General Act ("PAGA").

All settlement administration costs, attorneys' fees and costs, enhancement award payment, and payment to the California Labor and Workforce Development Agency for the claimed violations of the PAGA will be deducted from the Settlement Amount. The remaining amount will constitute the Net Settlement Amount.

Payment to Members of the Settlement Class: Each person who is currently employed by OAG in the State of California as non-exempt hourly employees at any time from October 1, 2015, and continuing through March 15, 2020 (the "Settlement Period") who does not submit a valid and timely Request to be Excluded (described below) will receive a pro rata share of the Net Settlement Amount based on the total number of workweeks he/she worked for OAG during the Settlement Period. The payment to each member of the Settlement Class who does not exclude himself/herself will be determined by dividing the Net Settlement Amount by the total number of eligible workweeks worked by all members of the Settlement Class during the Settlement Period (the "Weekly Amount") and then multiplying the Weekly Amount by the number of eligible workweeks worked by the individual member of the Settlement Class, less any applicable withholding taxes. The enclosed Notice of Settlement Award indicates the approximate amount you should expect to receive from this settlement.

Attorneys' Fees and Costs: OAG has agreed to pay Class Counsel's reasonable attorneys' fees and litigation costs in an amount to be determined by the Court, upon application to be filed by Class Counsel, up to a maximum amount of 33-1/3 percent of the Settlement Amount and litigation costs of up to the amount of \$15,000.

Enhancement Award: Plaintiff will request an enhancement award of up to \$10,000. The enhancement award is to compensate Plaintiff for undertaking the burden and expense of bringing and prosecuting the Action.

Settlement Administration Costs: The parties have estimated that the settlement administration costs will be approximately \$25,000. The Court has appointed CPT Group, Inc. as the “Settlement Administrator.”

Labor and Workforce Development Agency: As part of the settlement, OAG will pay \$30,000 to the Labor and Workforce Development Agency.

Payroll Taxes: Employment taxes and other legally required withholdings, other than employer taxes, will be withheld from payments to the members of the Settlement Class based on the parties’ stipulated allocation as provided below.

5. PAYMENT STRUCTURE

The Settlement Administrator will distribute (1) Net Settlement Payments (payments to members of the Settlement Class who do not submit timely and valid Requests to be Excluded), (2) Court-approved enhancement payment to Plaintiff, (3) Court-approved attorneys’ fees and costs, and (4) payment to the Labor and Workforce Development Agency, after the Court orders the award granting final approval of the settlement, and such order and judgement is final.

For tax withholding purposes and payment of taxes, the payments to members of the Settlement Class who do not submit timely and valid Requests to be Excluded will be characterized as follows:

- (1) 30% as wages; and
- (2) 70% as penalties and interest.

Members of the Settlement Class should consult with their tax advisors concerning the tax consequences of the payment they receive. No provision of the settlement, and no written communication or disclosure between or among the parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended). You must rely exclusively upon your own independent legal and tax advisors for tax advice in connection with the settlement.

6. RELEASE OF CLAIMS

Upon the date the Court makes the award granting final approval of the settlement, for the period from October 1, 2015 through March 15, 2020, Plaintiff and Settlement Class Members, except those that make a valid and timely request to be excluded from the Settlement Class, waive, release, discharge, and promise never to assert in any forum any and all wage-related claims against OAG (as defined in paragraph 2 above), their respective subsidiaries, affiliates, predecessors or successors in interest, or the officers, directors, shareholders, employees, attorneys, agents, assigns, insurers, re-insurers, of any of them, (collectively, “Released Parties”), that were asserted, or could have been asserted based on the facts alleged in the Action, including but not limited to: (1) failure to pay wages and overtime compensation; (2) failure to pay minimum wage; (3) rest break liability under Labor Code section 226.7; (4) meal period liability under Labor Code section 226.7; (5) failure to reimburse business expenses under Labor Code section 2802; (6) failure to timely pay wages due at termination or resignation; (7) failure to provide accurate itemized employee wage statements; (8) violations of Business & Professions Code section 17200, *et seq.*; and (9) penalties pursuant to California’s Private Attorneys General Act (Labor Code § 2698, *et seq.*) based on the foregoing facts and claims (collectively, “Released Claims”).

7. YOUR OPTIONS

As a member of the Settlement Class you have several options. Each option will affect your rights, which you should understand before making your decision. Your rights regarding each option, and the procedure you must follow to select each option, are explained below:

(a) You Can Do Nothing.

If you do nothing, you will be entitled to your individual settlement payment calculated based on the formula set forth above, as stated in the accompanying Notice of Settlement Award. You also will be bound by the settlement, including the Release of Claims set forth in paragraph 6 above.

(b) Dispute Information in Notice of Settlement Award.

Your award is based on the proportionate number of eligible workweeks you worked during the Settlement Period. The information contained in OAG's records regarding this information, along with your estimated individual settlement payment, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.** The parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, the Settlement Administrator's decision as to the number of eligible workweeks shall be final and non-appealable.

(c) You Can Opt-Out or Exclude Yourself from the Settlement Class.

If you do not want to remain a member of the Settlement Class, you can request exclusion from the Settlement Class (i.e., opt out) by sending to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>> by mail postmarked on or before _____, 2020, a written request for exclusion ("Request to be Excluded"), which must be signed by you or your authorized representative. The request must include the case number of this action (Case No. CIVDS2006540), your name, former names (if any), current mailing address and telephone number, the dates of your employment, and the last four digits of your Social Security number. Requests to be Excluded that do not include all required information, or that are not postmarked on or before the deadline, will be deemed null, void, and ineffective. If you opt out or exclude yourself from the Settlement Class, you will no longer be a member of the Settlement Class, you will not receive any benefits under the settlement, and you will be barred from objecting to the settlement. By opting out of the Settlement Class, you will retain whatever rights or claims you may have, if any, and pursue them at your expense against OAG.

Do not return both a Dispute and a Request to be Excluded. Should you do so, the Request to be Excluded will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the settlement.

(d) You Can Object To The Settlement.

If you are a member of the Settlement Class who does not opt out of the Settlement Class, you may object to the settlement, personally or through an attorney (retained at your own expense) by submitting your written objection to the Settlement Administrator by mail postmarked on or before _____, 2020 at <<INSERT ADMINISTRATOR CONTACT INFO>>. You must also mail a copy of your objection postmarked on or before _____, 2020 to Class Counsel and counsel for OAG at the above addresses. Your objection must state the basis of your objection, include any papers and briefs in support of your position, and provide verification that you are a member of the Settlement Class. All objections must be signed and should contain your mailing address and telephone number, and refer to this case. If you timely submit a written objection and simultaneously inform the Court that you wish to be heard at the final approval hearing, you may appear, personally or through an attorney (retained at your own expense) at the final approval hearing to present your objection directly to the Court. Your written objection should clearly explain why you object to the settlement and must state whether you (or someone on your behalf) intend to appear at the final approval hearing. If you do not comply with these procedures and the deadline for objections, you may lose any opportunity to have your objection considered at the final approval hearing or otherwise to contest the approval of the settlement. The Court retains final authority with respect to the consideration and admissibility of any Settlement Class Member objections. If you object to the settlement and if the Court approves the settlement, you will be bound by the terms of the settlement in the same way as a member of the Settlement Class who does not object. You may not submit a Request to be Excluded from the settlement if you wish to object to the settlement.

8. FINAL APPROVAL HEARING

You are not required to attend the final approval hearing. The final approval hearing on the fairness and adequacy of the settlement, the plan of distribution, the enhancement awards, and Class Counsel's request for attorneys' fees and costs will be held on _____, 2020 at _____ a.m./p.m., before Hon. David Cohn, Department S-26, located at San Bernardino Superior Court – Justice Center, 247 W. 3rd Street, San Bernardino, California 92415. The final approval hearing may be continued to another date without further notice.

9. ADDITIONAL INFORMATION

This Notice only summarizes the Action, the settlement and related matters. For more information, you may contact the Settlement Administrator at the address and telephone number set forth above. Alternatively, you may contact Class Counsel at the addresses and telephone numbers set forth above. If your address changes, or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

Dated: _____, 2020

By: Order of Hon. David Cohn

NOTICE OF SETTLEMENT AWARD

Oremor Automotive Group Class Action Settlement
San Bernardino Superior Court, Case No. CIVDS2006540

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

(I.) Please type or print your name:

(First, Middle, Last)

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

Former Names (if any)

New Street Address

City

State

Zip Code

(III.) Information Used to Calculate Your Individual Settlement Payment:

According to the records of OAG, you worked _____ eligible workweeks from October 1, 2015, and continuing through March 15, 2020.

Based on the above, your individual settlement payment is estimated to be \$_____.

(IV.) If you disagree with the number of eligible workweeks in Section III. above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from OAG's records, OAG's records will control unless you are able to provide documentation establishing that OAG's records are mistaken. If there is a dispute about whether OAG's information or yours is accurate, the dispute will be resolved by the parties and the Settlement Administrator as described in the Notice that accompanies this form.

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

NOTICE OF PENDENCY OF CLASS ACTION AND SETTLEMENT FOR FORMER EMPLOYEES

Oremor Automotive Group Class Action Settlement
San Bernardino Superior Court, Case No. CIVDS2006540

The Honorable David Cohn authorized this notice. This is not a solicitation from a lawyer.

To: All persons who are or were employed by Oremor Automotive Group (hereinafter “OAG” and as further as defined in Paragraph 2 below) in the State of California as non-exempt hourly employees at any time from October 1, 2015, and continuing through March 15, 2020 (the “Settlement Class” or “Settlement Class Members”).

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY. YOU MAY BE ENTITLED TO RECEIVE MONEY UNDER THIS SETTLEMENT. TO RECEIVE MONEY UNDER THIS SETTLEMENT, YOU MUST SIGN AND RETURN THE ENCLOSED CLAIM FORM WITH A POSTMARK DATE ON OR BEFORE _____, 2020.

You are receiving this Notice because the Court has granted preliminary approval of a settlement (the “Stipulation of Resolution”) in a class action on behalf of current and former employees of OAG. The class action is referred to in this Notice as “the Action.” The settlement will resolve specific claims, discussed herein, against OAG. A hearing addressing the fairness, adequacy and reasonableness of the settlement will be held on _____, 2020 to determine whether the settlement should receive the Court’s final approval.

1. PURPOSE OF THIS NOTICE

- The Court has ordered that this Notice be sent to you because you have been identified as a potential member of the settlement class. The settlement class (“Settlement Class”) is defined as follows: All persons who are or were employed by OAG (at one or more of the dealerships listed below) in the State of California as non-exempt hourly employees at any time from October 1, 2015, and continuing through March 15, 2020.
- Receipt of this Notice means that you may be entitled to share in the proceeds from the settlement if you submit a timely and valid Claim Form. The purpose of this Notice is to: (a) provide a brief description of the Action; (b) inform you of the settlement; and (c) discuss your rights and options with respect to the Action and the settlement.

2. DESCRIPTION OF THE ACTION

- A former employee (“Plaintiff”) instituted the Action on behalf of himself and similarly-situated persons, alleging that OAG failed to pay the Settlement Class all wages and overtime, failed to pay the applicable minimum wage, failed to provide compliant meal and rest breaks, failed to reimburse business expenses, failed to provide accurate itemized wage statements, and failed to provide full wages to employees upon termination and/or resignation. Moreover, the Action alleges, based on the foregoing allegations, that OAG engaged in unfair business practices under California’s Business and Professions Code section 17200, *et seq.* and violated California’s Private Attorneys General Act (“PAGA”), Labor Code section 2698, *et seq.*
- **OAG denies liability and maintains that it has fully complied with California’s wage and hour laws. OAG contends that this settlement was established specifically to avoid the cost of further litigation.**
- OAG operates automobile dealerships in California under several legal entities including J. McCullough Corp. dba Oremor Automotive Group, a California corporation; Oremor of Fresno, Inc. dba Fresno Lexus, a California corporation; Oremor of Glendale LLC dba Toyota of Glendale, a California company; Oremor of Riverside, LLC dba BMW of Riverside, a California company; Oremor of Riverside II, LLC dba Infiniti of Riverside, a California company; Oremor of Riverside RC, LLC dba Riverside Chevrolet, a California company; Oremor of

Temecula, LLC dba Temecula Valley Toyota, a California company; Oremor of Tustin, Inc. dba Tustin Toyota, a California corporation; Oremor European, LLC dba Mercedes Benz of El Cajon, a California company; United Recovery, Inc., a California corporation; Oremor of Italy, Inc. dba Fiat of Ontario, a California corporation; Oremor of Italy II, LLC dba Maserati & Alfa Romeo of Ontario, a California company; Oremor of Woodland Hills LLC dba Lexus of Woodland Hills, a California company; Aquirecorp's Norwalk Auto Auction dba Norwalk Auto Auction, a California corporation; Jeep Chrysler of Ontario, Inc. dba Jeep Chrysler Dodge Ram Fiat, Dodge of Ontario, a California corporation; Romero Motors Corporation dba Ontario Hyundai Mazda, a California corporation; and Empire Nissan, Inc., a California corporation (collectively, "OAG").

The Court has made no ruling on the merits of Plaintiff's claims or the defenses asserted by OAG. The Court has preliminarily approved the settlement. The Court will decide whether to grant final approval to the settlement at a hearing scheduled for _____, 2020.

3. WHO ARE THE ATTORNEYS REPRESENTING THE PARTIES?

Attorneys for Plaintiff and the Settlement Class ("Class Counsel"):

Anthony J. Orshansky, Esq.
Justin Kachadoorian, Esq.
Jennifer L. Connor, Esq.
COUNSELONE, P.C.
9301 Wilshire Boulevard, Suite 650
Beverly Hills, California 90210
Telephone: (310) 277-9945

Attorneys for OAG:

Mark J. Jacobs, Esq.
John M. Polson, Esq.
FISHER PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614
Telephone: (949) 851-2424

4. TERMS OF THE SETTLEMENT

OAG has agreed to pay \$1,800,000 under the settlement. This amount is called the Settlement Amount. The Settlement Amount will be used to cover payments to members of the Settlement Class who submit valid and timely Claim Forms, settlement administration costs, attorneys' fees and costs, the enhancement award, and payment to the California Labor and Workforce Development Agency for the claimed violations of the Private Attorneys General Act ("PAGA").

All settlement administration costs, attorneys' fees and costs, enhancement award payment, and payment to the California Labor and Workforce Development Agency for the claimed violations of the PAGA will be deducted from the Settlement Amount. The remaining amount will constitute the Net Settlement Amount.

Payment to Members of the Settlement Class: Each person who was formerly employed by OAG in the State of California as non-exempt hourly employees at any time from October 1, 2015, and continuing through March 15, 2020 (the "Settlement Period") who submits a valid and timely Claim Form will receive a pro rata share of the Net Settlement Amount based on the total number of workweeks he/she worked for OAG during the Settlement Period. The payment to each member of the Settlement Class who does not exclude himself/herself and who submits a valid and timely Claim Form will be determined by dividing the Net Settlement Amount by the total number of eligible workweeks worked by all members of the Settlement Class during the Settlement Period (the "Weekly Amount") and then multiplying the Weekly Amount by the number of eligible workweeks worked by the individual member of the Settlement Class, less any applicable withholding taxes. The enclosed Claim Form indicates the approximate amount you should expect to receive from this settlement. If you do not submit a valid and timely Claim Form, you will not be entitled to any recovery under the settlement notwithstanding the fact that your claims will be extinguished as set forth below in paragraph 6, Release of Claims.

Attorneys' Fees and Costs: OAG has agreed to pay Class Counsel's reasonable attorneys' fees and litigation costs in an amount to be determined by the Court, upon application to be filed by Class Counsel, up to a maximum amount of 33-1/3 percent of the Settlement Amount and litigation costs of up to the amount of \$15,000.

Enhancement Award: Plaintiff will request an enhancement award of up to \$10,000. The enhancement award is to compensate Plaintiff for undertaking the burden and expense of bringing and prosecuting the Action.

Settlement Administration Costs: The parties have estimated that the settlement administration costs will be approximately \$25,000. The Court has appointed CPT Group, Inc. as the "Settlement Administrator."

Labor and Workforce Development Agency: As part of the settlement, OAG will pay \$30,000 to the Labor and Workforce Development Agency.

Payroll Taxes: Employment taxes and other legally required withholdings, other than employer taxes, will be withheld from payments to the members of the Settlement Class based on the parties' stipulated allocation as provided below.

5. PAYMENT STRUCTURE

The Settlement Administrator will distribute (1) Net Settlement Payments (payments to members of the Settlement Class who submit timely and valid Claim Forms), (2) Court-approved enhancement payment to Plaintiff, (3) Court-approved attorneys' fees and costs, and (4) payment to the Labor and Workforce Development Agency, after the Court orders the award granting final approval of the settlement, and such order and judgement is final.

For tax withholding purposes and payment of taxes, the payments to members of the Settlement Class who submit timely and valid Claim Forms will be characterized as follows:

- (1) 30% as wages; and
- (2) 70% as penalties and interest.

Members of the Settlement Class should consult with their tax advisors concerning the tax consequences of the payment they receive. No provision of the settlement, and no written communication or disclosure between or among the parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended). You must rely exclusively upon your own independent legal and tax advisors for tax advice in connection with the settlement.

6. RELEASE OF CLAIMS

Upon the date the Court makes the award granting final approval of the settlement, for the period from October 1, 2015 through March 15, 2020, Plaintiff and Settlement Class Members, except those that make a valid and timely request to be excluded from the Settlement Class, waive, release, discharge, and promise never to assert in any forum any and all wage-related claims against OAG (as defined in paragraph 2 above), their respective subsidiaries, affiliates, predecessors or successors in interest, or the officers, directors, shareholders, employees, attorneys, agents, assigns, insurers, re-insurers, of any of them, (collectively, "Released Parties"), that were asserted, or could have been asserted based on the facts alleged in the Action, including but not limited to: (1) failure to pay wages and overtime compensation; (2) failure to pay minimum wage; (3) rest break liability under Labor Code section 226.7; (4) meal period liability under Labor Code section 226.7; (5) failure to reimburse business expenses under Labor Code section 2802; (6) failure to timely pay wages due at termination or resignation; (7) failure to provide accurate itemized employee wage statements; (8) violations of Business & Professions Code section 17200, *et seq.*; and (9) penalties pursuant to California's Private Attorneys General Act (Labor Code § 2698, *et seq.*) based on the foregoing facts and claims (collectively, "Released Claims").

7. **YOUR OPTIONS**

As a member of the Settlement Class you have several options. Each option will affect your rights, which you should understand before making your decision. Your rights regarding each option, and the procedure you must follow to select each option, are explained below:

(a) You Can Submit a Claim Form And Receive Money Under the Settlement.

If you want to receive benefits under the settlement, you must sign and return a Claim Form to the Settlement Administrator at the address below by U.S. Mail **postmarked no later than _____, 2020**. It is recommended that you retain a receipt of your mailing, or that you call the Settlement Administrator before the submission deadline to confirm the Settlement Administrator has received your Claim Form or request for exclusion. The contact information for the Settlement Administrator is:

CPT Group, Inc.
Oremor Automotive Claims Administration
50 Corporate Park
Irvine, California 92606
Telephone: 1-888-XXX-XXXX

A copy of your Claim Form is included along with this Notice. If you need another copy, contact the Settlement Administrator. If any information on the Claim Form is incorrect, please state on the Claim Form what you believe is the correct information. The parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, the Settlement Administrator's decision as to the number of eligible workweeks shall be final and non-appealable. If you do not timely submit a signed Claim Form, properly completed, you will not receive any payments under the settlement, but you will be subject to the Release of Claims set forth in paragraph 6 above. Pursuant to section (c) below, if you submit a timely and written Request to be Excluded, you will not receive any payments under the settlement but you will retain whatever rights or claims you may have, if any, and pursue them at your expense against OAG.

(b) You Can Do Nothing.

If you do nothing – that is, you do not send a timely, properly completed and signed Claim Form – you will not receive any benefits under the settlement. However, you will be bound by the terms of the settlement, including the Release of Claims set forth in paragraph 6 above, even though you did not receive any money or benefits from the settlement. Nevertheless, you have the right to do nothing.

(c) Dispute Information in Claim Form.

Your award is based on the proportionate number of eligible workweeks you worked during the Settlement Period. The information contained in OAG's records regarding this information, along with your estimated individual settlement payment, is listed on the accompanying Claim Form. If you disagree with the information in your Claim Form, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Claim Form. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.** The parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, the Settlement Administrator's decision as to the number of eligible workweeks shall be final and non-appealable.

(d) You Can Opt-Out or Exclude Yourself from the Settlement Class.

If you do not want to remain a member of the Settlement Class, you can request exclusion from the Settlement Class (i.e., opt out) by sending to the Settlement Administrator by mail postmarked on or before _____, 2020, a written request for exclusion ("Request to be Excluded"), which must be signed by you or your authorized representative. The request must include the case number of this action (Case No. CIVDS2006540), your name, former names (if any), current mailing address and telephone number, the dates of your employment, and the last four digits of your Social

Security number. Requests to be Excluded that do not include all required information, or that are not postmarked on or before the deadline, will be deemed null, void, and ineffective. If you opt out or exclude yourself from the Settlement Class, you will no longer be a member of the Settlement Class, you will not receive any benefits under the settlement, and you will be barred from objecting to the settlement. By opting out of the Settlement Class, you will retain whatever rights or claims you may have, if any, and pursue them at your expense against OAG.

Do not return both a Claim Form and a Request to be Excluded. Should you do so, the Request to be Excluded will be deemed void, and of no force and effect, while the Claim Form will be processed pursuant to the terms of the settlement.

(e) You Can Object To The Settlement.

If you are a member of the Settlement Class who does not opt out of the Settlement Class, you may object to the settlement, personally or through an attorney (retained at your own expense) by submitting your written objection to the Settlement Administrator by mail postmarked on or before _____, 2020 at <<INSERT ADMINISTRATOR CONTACT INFO>>. You must also mail a copy of your objection postmarked on or before _____, 2020 to Class Counsel and counsel for OAG at the above addresses. Your objection must state the basis of your objection, include any papers and briefs in support of your position, and provide verification that you are a member of the Settlement Class. All objections must be signed and should contain your mailing address and telephone number, and refer to this case. If you timely submit a written objection and simultaneously inform the Court that you wish to be heard at the final approval hearing, you may appear, personally or through an attorney (retained at your own expense) at the final approval hearing to present your objection directly to the Court. Your written objection should clearly explain why you object to the settlement and must state whether you (or someone on your behalf) intend to appear at the final approval hearing. If you do not comply with these procedures and the deadline for objections, you may lose any opportunity to have your objection considered at the final approval hearing or otherwise to contest the approval of the settlement. The Court retains final authority with respect to the consideration and admissibility of any Settlement Class Member objections. If you object to the settlement and if the Court approves the settlement, you will be bound by the terms of the settlement in the same way as a member of the Settlement Class who does not object. You may submit a Claim Form along with your statement of objection, but you may not submit a Request to be Excluded from the settlement if you wish to object to the settlement.

8. FINAL APPROVAL HEARING

You are not required to attend the final approval hearing. The final approval hearing on the fairness and adequacy of the settlement, the plan of distribution, the enhancement awards, and Class Counsel's request for attorneys' fees and costs will be held on _____, 2020 at _____ a.m./p.m., before Hon. David Cohn, Department S-26, located at San Bernardino Superior Court – Justice Center, 247 W. 3rd Street, San Bernardino, California 92415. The final approval hearing may be continued to another date without further notice.

9. ADDITIONAL INFORMATION

This Notice only summarizes the Action, the settlement and related matters. For more information, you may contact the Settlement Administrator at the address and telephone number set forth above. Alternatively, you may contact Class Counsel at the addresses and telephone numbers set forth above. If your address changes, or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

Dated: _____, 2020

By: Order of Hon. David Cohn

EXHIBIT B

CLAIM FORM

Oremor Automotive Group Class Action Settlement
San Bernardino Superior Court, Case No. CIVDS2006540
Honorable David Cohn

THE DEADLINE FOR SUBMITTING THIS CLAIM FORM IS _____, 2020

CPT ID: <<ID>>

<<Name>>

<<Address1>> <<Address2>>

<<City>>, <<State>> <<Zip Code>>

<<Barcode>>

Please provide current address (if different) here:

(____) ____ - ____
DAYTIME TELEPHONE NUMBER

If any of the information on the above left column is inaccurate,
please provide the corrected information in the space provided in the right column.

I. EMPLOYMENT INFORMATION

According to the employment records of Oremor Automotive Group ("OAG") you were employed for a total of <<workweeks>> workweeks during the time period from October 1, 2015 to March 15, 2020. Therefore, you are a member of the Settlement Class unless you elect to opt out.

Based on the above number of workweeks, the Settlement Administrator has preliminarily calculated your total share due under the settlement to be approximately <<estAmount>>. This figure could increase or decrease depending on various factors including, but not limited to, the total number of claims received.

If you disagree with the information in this Section I pertaining to the number of workweeks, but still wish to participate in the settlement, please check the appropriate box in Section II below and mail your disagreement and any supporting documents together with a signed Claim Form to the Settlement Administrator on or before _____, 2020.

II. ACCURACY OF THE INFORMATION LISTED IN SECTION I ABOVE

- ☐ The information set forth in Section I pertaining to the number of workweeks during the period from October 1, 2015 to March 15, 2020 is accurate.
- ☐ I wish to challenge the total number of workweeks during the period from October 1, 2015 to March 15, 2020. I have included with my signed Claim Form a written statement with what I believe is the correct number of workweeks that I worked for OAG during the period from October 1, 2015 to March 15, 2020. I have also included documentary evidence that supports my claim, and I recognize that my claim will not be reviewed without such statement or evidence being provided. I understand that by submitting this challenge, I authorize the Settlement Administrator to review and make a determination based on OAG's records and the records/statement I submitted. I understand that this determination may increase or decrease the amount of my settlement share. I understand that such determinations are final and non-appealable.

III. RELEASE OF CLAIMS

Upon the date the Court makes the award granting final approval of the settlement, for the period from October 1, 2015 through March 15, 2020, I hereby waive, release, discharge, and promise never to assert in any forum any and all wage-related claims against OAG (as defined in the Notice), their respective subsidiaries, affiliates, predecessors or successors in interest, or the officers, directors, shareholders, employees, attorneys, agents, assigns, insurers, re-insurers, of any of them, (collectively, "Released Parties"), that were asserted, or could have been asserted based on the facts alleged in the Action, including but not limited to: (1) failure to pay wages and overtime compensation; (2) failure to pay minimum wage; (3) rest break liability under Labor Code section 226.7; (4) meal period liability under Labor Code section 226.7; (5) failure to reimburse business expenses under Labor Code section 2802; (6) failure to timely pay wages due at termination or resignation; (7) failure to provide accurate itemized employee wage statements; (8) violations of Business & Professions Code section 17200, *et seq.*; and (9) penalties pursuant to California's Private Attorneys General Act (Labor Code § 2698, *et seq.*) based on the foregoing facts and claims (collectively, "Released Claims").

IV. MAILING INSTRUCTIONS

Please mail this completed Claim Form to the Settlement Administrator at the address listed below. Your completed Claim Form (and any supporting documentation if you dispute the number of workweeks) must be postmarked on or before _____, 2020; otherwise, you will not receive any money or benefits from the settlement but will still be bound by the terms of the settlement, including the Release of Claims.

If you do nothing – that is, you do not send a timely and properly completed and signed Claim Form – you will not receive any benefits under the settlement. However, you will be bound by the terms of the settlement, including the Release of Claims, even though you did not receive any money or benefits from the settlement.

The address of the Settlement Administrator is:

CPT Group, Inc.
Oremor Automotive Claims Administration
50 Corporate Park
Irvine, California 92606
Telephone: 1-888-XXX-XXXX

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE ABOVE STATEMENTS ARE TRUE AND CORRECT.

Signed this _____ day of _____, 2020 at _____.
(month) (City)

Signature

Print Name

E-mail address

Telephone Number

If you have any questions about completing this Claim Form, please call the Settlement Administrator at: 1-888-XXX-XXXX.

Questions? Please call xxx-xxx-xxxx

PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; am employed with the law offices of Fisher & Phillips LLP and my business address is 2050 Main Street, Suite 1000, Irvine, California 92614.

On July 22, 2020, I served the foregoing document entitled **DECLARATION OF ANTHONY J. ORSHANSKY IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on all the appearing and/or interested parties in this action by placing ☐ *the original* ☒ *a true copy* thereof enclosed in sealed envelope(s) addressed as follows:

Anthony J. Orshansky, Esq.
Jennifer L. Connor, Esq.
COUNSELONE, P.C.
9301 Wilshire Blvd., Suite 650
Beverly Hills, CA 90210

Attorneys for Plaintiff
Telephone: (310) 277-9945
Fax: (424) 277-3727
E-Mail: anthony@counselonegroup.com
jennifer@counselonegroup.com

Mark J. Jacobs, Esq.
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, CA 92614

Attorneys for Defendants
Telephone: (949) 851-2424
Fax: (949) 851-0152
E-Mail: mjacobs@fisherphillips.com

- ☒ **[by MAIL]** - I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.
- ☐ **[by FAX]** - I caused the aforementioned document(s) to be telefaxed to the aforementioned facsimile number(s). The machine printed a record of the transmission, and no error was reported by the machine.
- ☒ **[by ELECTRONIC SERVICE]** - Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification address listed above.
- ☐ **[by PERSONAL SERVICE]** - I caused to be delivered by messenger such envelope(s) by hand to the office of the addressee(s). Such messenger is over the age of eighteen years and not a party to the within action and employed with ASAP Legal Solution Attorney Services LLC, whose business address is 404 W. 4th Street, Suite B, Santa Ana, CA 92701.

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

Executed July 22, 2020, at Irvine, California.

MICHELE FELTS

Print Name

By:



Signature