

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Matthew K. Moen (SBN 305956)
mmoen@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

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

SANTOS ORELLANA, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

SMARTE CARTE, INC., a Minnesota
corporation; and DOES 1 through 100,

Defendants.

Case No. 20STCV08890

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

**DECLARATION OF FLETCHER W.
SCHMIDT IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: September 14, 2021
Time: 10:00 a.m.
Dept.: SSC-9

Action Filed: March 5, 2020
Trial Date: None Set

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

I, FLETCHER W. SCHMIDT, declare as follows:

1. I am a Partner at the Haines Law Group, APC, and counsel for the named Plaintiff Santos Orellana (“Plaintiff”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I am a 2012 graduate of Loyola Law School, Los Angeles, where I graduated *cum laude* and was awarded membership in the Order of the Coif. Since graduating from law school, I worked as a law clerk for the law firm of Tredway, Lumsdaine & Doyle, where I was part of the defense team for two class actions, including one wage and hour class action in Los Angeles County Superior Court. From August 2013 to March 2016, I worked as an associate attorney at Boren, Osher & Luftman LLP. Since March 2016 I have worked at my current firm, Haines Law Group, APC, where, in 2018, I became a Partner.

3. During my time with Boren, Osher & Luftman LLP and Haines Law Group, APC, my practice has been solely devoted to litigating plaintiff-side wage and hour class actions in California state and federal court. I am currently responsible for managing a caseload of over seventy-five (75) active wage and hour class actions in which I am integrally involved in all aspects of the litigation.

4. The following is a non-exhaustive list of class action settlements in which I have been named as Class Counsel, and which have been granted final approval: *Julio v. Anthony, Inc.*, Case No. CV14-03172 AB (SHx), United States District Court, Central District of California, Honorable Judge Andre Birotte, Jr. presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Litt v. Western Stone & Metal Corp.*, Case No. 3:14-cv-02804-PJH, United States District Court, Northern District of California, Honorable Judge Phyllis J. Hamilton presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Rubalcava v. United Towing and Transport Burbank, et al.*, Case No. BC518468, California Superior Court, County of Los Angeles, Honorable Judge Kenneth Freeman

1 presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015);
2 *Rivera Regalado v. Jaguar Farm Labor Contracting*, Case No. CV 130569, California Superior
3 Court, County of San Luis Obispo, Honorable Martin J. Tangeman presiding (approving an
4 hourly rate of \$350 for work performed in 2014 and 2015); *Sanchez v. Res-Care, Inc.*, Case No.
5 BC526175, California Superior Court, County of Los Angeles, Honorable John S. Wiley
6 presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015);
7 *Rodas v. Gateways Hospital and Mental Health Center*, Case No. BC503179, California
8 Superior Court, County of Los Angeles, Honorable Judge Amy D. Hogue presiding (approving
9 an hourly rate of \$350 for work performed in 2014 and 2015); *Prado v. Warehouse Demo*
10 *Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of
11 California, Honorable Judge John F. Walter presiding (approving an hourly rate of \$350 for
12 work performed in 2014 and 2015); *Shaw v. Conant Auto Retail, San Diego*, Case No. 37-2014-
13 00044052-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge
14 Joan M. Lewis presiding (approving an hourly rate of \$375 for work performed in 2014, 2015,
15 and 2016); *Tirado v. Ricon Corp.*, Case No BC537042, California Superior Court, County of
16 Los Angeles, Honorable Judge John Shepard Wiley, Jr. presiding (approving an hourly rate of
17 \$375 for work performed in 2014, 2015, and 2016); *Tesla Motors Wage and Hour Litigation*,
18 JCCP 4792, California Superior Court, County of Santa Clara, Honorable Peter H. Kirwan
19 presiding (approving an hourly rate of \$375 for work performed in 2013, 2014, 2015, and
20 2016); *Lopez v. RM HQ LLC, et al.*, Case No. BC525592, California Superior Court, County of
21 Los Angeles, Honorable Elihu M. Berle presiding (approving an hourly rate of \$375 for work
22 performed in 2013, 2014, 2015, and 2016); *Horta v. Searles Valley Minerals, Inc.*, Case No.
23 CIVDS 1507615, California Superior Court, County of San Bernardino, Honorable Donald
24 Alvarez presiding (approving an hourly rate of \$375 for work performed in 2015 and 2016);
25 *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of
26 California, County of Los Angeles, Honorable Judge Elihu M. Berle presiding (approved at an
27 hourly rate of \$425 for work performed in 2016 and 2017); *Khosravi v. Enterprise Rent-A-Car*
28 *Company of Los Angeles, LLC, et al.*, Case No. 30-2016-00829923-CU-OE-CXC, Superior

1 Court of California, County of Orange, Honorable Judge Thierry Patrick Colaw presiding
2 (approved at an hourly rate of \$425 for work performed in 2016 and 2017); *Nieves v. Ta Chen*
3 *International, Inc.*, Case No. BC609005, Superior Court of California, County of Los Angeles,
4 Honorable Judge Kenneth R. Freeman presiding (approved at an hourly rate of \$425 for work
5 performed in 2016 and 2017); *Berkel v. Pride Bakeries, LLC*, Case No. 30-2017-00923148-CU-
6 OE-CXC, Superior Court of California, County of Orange, Honorable Judge William Claster
7 presiding (approved at an hourly rate of \$425 for work performed in 2017 and 2018); *Ruvalcaba*
8 *Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-CU-OE-CXC, Superior
9 Court of California, County of Orange, Honorable William D. Claster presiding (approving an
10 hourly rate of \$425 for work performed in 2016, 2017 and 2018); *Armenta, et al., v. California*
11 *Friends Homes d/b/a Quaker Gardens*, Case No. 30-2016-00883282-CU-OE-CXC, Superior
12 Court of California, County of Orange, Honorable Randall J. Sherman presiding (approving an
13 hourly rate of \$425 for work performed in 2016, 2017 and 2018); *Sandra Zinnerman v.*
14 *Tumbleweed Educational Enterprises, Inc.*, Case No. BC673708, Superior Court of California,
15 County of Los Angeles, Honorable Maren E. Nelson presiding (approving an hourly rate of
16 \$425 for work performed in 2016, 2017, and 2018); *Tina Arellano v. Williams Sonoma Stores,*
17 *Inc.*, Case No. BC693760, Los Angeles County Superior Court, Honorable Daniel J. Buckley,
18 presiding; *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los Angeles County
19 Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$475 for
20 work performed in 2017, 2018 and 2019); *Maria C. Garcia, et al. v. Simplified Labor Staffing*
21 *Solutions, Inc.*, Case No. BC696898, Los Angeles County Superior Court, Honorable Elihu M.
22 Berle, presiding (approving an hourly rate of \$475 for work performed in 2018 and 2019);
23 *Arturo Delgado v. Spears Manufacturing Co.*, Case No. BC709665, Los Angeles County
24 Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$595 for
25 work performed in 2018, 2019 and 2020); *Soto v. L I Metal Systems*, Case No. 37-2017-
26 00009607-CU-OE-CTL, San Diego County Superior Court, Honorable Timothy Taylor,
27 presiding (approving an hourly rate of \$595 for work performed in 2017-2020); *Michael*
28 *Fishback v. Paragon Framing, Inc.*, Case No. CIVDS1906610, San Bernardino County

1 Superior Court, Honorable David Cohn, presiding (approving an hourly rate of \$595 for work
2 performed in 2019 and 2020); *Francisco Garcia v. Searing Industries, Inc.*, Case No.
3 CIVDS1932477, San Bernardino County Superior Court, Honorable David Cohn, presiding
4 (approving an hourly rate of \$595 for work performed in 2019 and 2020); *David Hasler, et al. v.*
5 *Anheuser-Busch, LLC*, Case No. 19STCV00802, Los Angeles County Superior Court,
6 Honorable Daniel J. Buckley, presiding; and *Angel Ochoa v. Fonseca Construction, Inc.*, Case
7 No. CIVDS1928625, San Bernardino County Superior Court, Honorable David Cohn, presiding
8 (approving an hourly rate of \$595 for work performed in 2019 to 2021).

9 5. I have also moved to certify and have received an order certifying a class action
10 and/or conditionally certifying a collective action as Class Counsel in the following cases:
11 *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC,
12 California Superior Court, County of Orange, Honorable Judge Gail A. Andler presiding
13 (certifying a class of employees who were misclassified as independent contractors); *Javine v.*
14 *San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District
15 Court, Central District of California, Honorable Judge Beverly Reid O'Connell presiding
16 (conditionally certifying an unpaid FLSA overtime wage class); *Prado v. Warehouse Demo*
17 *Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of
18 California, Honorable Judge John F. Walter presiding (certifying a rest period violation class
19 and conditionally certifying a FLSA unpaid overtime wage class); *Bower v. Cycle Gear, Inc.*,
20 Case No. CV14-2712 HSG, United States District Court, Northern District of California,
21 Honorable Judge Haywood S. Gilliam, Jr. presiding (conditionally certifying an unpaid FLSA
22 overtime wage class); *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-
23 JLT, United States District Court, Eastern District of California, Honorable Judge Jennifer L.
24 Thurston presiding (conditionally certifying an unpaid FLSA overtime wage class); *Galvan v.*
25 *AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California
26 Superior Court, County of Orange, Honorable Judge William Claster presiding (certifying
27 unpaid overtime wage class and waiting time penalty class); *Camacho v. Residential Fire*
28 *Systems, Inc.*, Case No. 30-2015-00775372-CU-OE-CXC, California Superior Court, County of

1 Orange, Honorable Judge Glenda Sanders presiding (certifying five separate classes for claims
2 for unpaid wages, unreimbursed expenses, failure to authorize and permit rest periods, and
3 derivative claims); *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG
4 (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee
5 presiding (certifying six classes of employees for rest period violations, wage statement
6 violations, meal period violations, and overtime and double-time violations); *Staublein v. Wells*
7 *Fargo Bank, National Association*, Case No. CIVDS1712267, San Bernardino Superior Court,
8 Honorable David Cohn presiding (certifying a wage statement class); and *Danica N. Keich, et al.*
9 *v. U.S. Healthworks, Inc., et al.*, Case No. 37-2017-00015343-CU-OE-CTL, San Diego County
10 Superior Court, Honorable Eddie C. Sturgeon, presiding (certifying classes for rest period
11 violations, meal period violations, on-call pay violations, wage statement violations, and waiting
12 time violations).

13 6. In 2018-2021, Thomson Reuters and Los Angeles Magazine recognized me as a
14 Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers.
15 This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the
16 age of forty in Southern California each year.

17 7. As counsel for Plaintiff, I have been closely involved in all aspects of this
18 litigation since its inception, and believe that the proposed Settlement is a fair and reasonable
19 result for the Settlement Class Members.

20 8. Defendant Smarte Carte, Inc. ("Defendant") provides travel-related rentals, such
21 as luggage carts and electronic lockers, and related guest services within various travel hubs and
22 retail locations throughout California, including at LAX and SFO airports. Plaintiff was hired by
23 Defendant as a non-exempt employee in approximately November 2004, where he worked until
24 taking a temporary leave of absence due to a workplace injury from approximately March 6,
25 2019 until approximately February 17, 2020. Plaintiff was subsequently furloughed during and
26 as a result of the COVID-19 pandemic. Like all Settlement Class Members, Plaintiff was
27 subject to Defendant's wage and hour policies and practices.

28 ///

1 9. On March 5, 2020, Plaintiff filed the initial Complaint in this action, alleging
2 Defendant failed to: (i) pay all overtime wages owed; (ii) pay all minimum wages owed; (iii)
3 provide all lawful meal periods; (iv) authorize and permit all lawful rest periods; (v) issue
4 accurate and itemized wage statements; and (vi) comply with California’s Unfair Competition
5 laws. On May 11, 2020, Plaintiff filed his First Amended Complaint, adding a cause of action
6 for civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.*
7 (“PAGA”), premised on the underlying Labor Code violations. On June 9, 2021, Plaintiff filed
8 the operative Second Amended Complaint, adding a cause of action for waiting time penalties
9 under Labor Code sections 201-203.

10 10. Plaintiff asserts that, throughout the putative class period, Defendant maintained
11 an unlawful rounding practice that was not even handed over time and resulted in Defendant
12 systematically underpaying Plaintiff and other similarly situated employees all earned wages.
13 Specifically, Plaintiff claims Defendant records Plaintiff’s and other similarly situated
14 employees’ clock in and clock out timeclock punches to the minute. However, Defendant only
15 paid Plaintiff and other similarly situated employees in 15-minute increments. Plaintiff asserts
16 that this rounding practice was not even-handed over time, resulting in unpaid minimum and
17 overtime wages.

18 11. In response, Defendant contends that its timekeeping practices are lawful and its
19 rounding practice is neutral and operates in an even-handed way, which Defendant asserts is
20 lawful under the court’s ruling in *See’s Candy Shops, Inc. v. Superior Court* (2012) 210
21 Cal.App.4th 889. Moreover, Defendant contends that Plaintiff could not certify this claim, as it
22 would require individualized inquiries into each employee on a pay period by pay period basis
23 as to whether the employee was overpaid or underpaid based on Defendant’s rounding practice,
24 resulting in an unmanageable series of mini-trials. Defendant further contends that Plaintiff
25 would fail at certifying his rounding-practice class because of the individualized issues present
26 between each of Defendant’s airport and retail locations, including the presence of different
27 unions (or no unions), employees required to work at multiple site locations in a single day, and
28

employees paid fixed amounts per job, all of which would have required individual inquiries into the application and “in-practice” neutrality of Defendant’s rounding practice.

12. Plaintiff further asserts that Defendant failed to provide Plaintiff and the Class Members with all lawful meal periods to which they were entitled, and failed to adopt a facially-lawful written meal period policy during the Class Period. Specifically, Plaintiff asserts that Defendant failed to provide Plaintiff and the putative class members with all duty-free, uninterrupted 30-minute meal periods commencing before the end of the fifth hour of work, and never provided a second, duty-free, uninterrupted 30-minute meal period commencing before the end of the tenth hour of work on days in which the employee worked more than 10.0 hours. Further, Plaintiff’s data analysis revealed that Defendant did not pay a single meal period premium during the Class Period, an issue which itself is certifiable.

13. In response, Defendant contends that it maintained lawful meal period policies/practices throughout the Class Period. Moreover, Defendant argues that it provided employees with the opportunity to take all legally-compliant meal periods, and that under *Brinker v. Superior Court* (2012) 53 Cal.4th 1004, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, which Defendant contends it has always done. Therefore, Defendant asserts that if employees did not take timely meal periods, this was solely the result of employee choice and not reflective of Defendant’s policies and practices. Finally, Defendant contends that Plaintiff’s meal period claim is not suited for class certification as individual inquiries would be required to assess the reasons why a particular individual recorded a non-compliant meal period or missed a meal period on a particular shift, and whether the employees chose to take late meal periods, resulting in a series of mini-trials.

14. Plaintiff further alleges that Defendant failed to authorize and permit Plaintiff and the Class Members to take all lawful rest periods to which they were entitled. Specifically, Plaintiff asserts that Defendant maintained facially unlawful rest period policies, which only authorized and permitted two rest periods for “Employees working an eight-hour shift,” failing to authorize and permit a single rest period for shifts lasting between 3.5 and 6.0 hours in length,

1 or a third rest period for shifts in excess of 10.0 hours, and failing to incorporate the “or major
2 fraction thereof” language of the Wage Order. Further, Plaintiff asserts that Defendant
3 maintains a facially unlawful written policy which prohibits employees from leaving company
4 property during their rest periods, in violation of the California Supreme Court’s holding in
5 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260. Plaintiff also asserts that
6 Defendant requires putative class members to carry company-issued radios/phones/walkie-
7 talkies on their persons at all times and to respond to incoming radio calls, including during
8 purported rest periods, and has therefore failed to relinquish all control over how the employees
9 spend their break time. On occasions when lawful rest periods were allegedly not authorized
10 and permitted, Defendant failed to pay rest period premiums as required by Labor Code section
11 226.7; an issue which itself is certifiable.

12 15. Defendant argues that it maintained lawful rest period policies/practices, and
13 asserts that, in practice, Plaintiff and the Class Members were authorized and permitted to take
14 all lawful rest periods to which they were entitled. Therefore, Defendant asserts that if
15 employees did not take rest periods, this was solely the result of employee choice and not
16 reflective of Defendant’s policies and practices. Defendant also argues that Plaintiff will be
17 unable to substantiate his rest period claim with any documentary evidence, and asserts that not
18 all employees were required to carry radios on their persons during work hours or even at all of
19 Defendant’s airport locations. Further, Defendant asserts that this claim is unmanageable, as it
20 requires individualized inquiries into whether each employee failed to take a lawful rest period
21 and on which days, which employees, if any, were required to carry radios on their persons, and
22 on which days, and whether the employees were required to keep their radios on them during
23 rest periods, and on which days, resulting in an unmanageable series of mini-trials. These
24 manageability concerns are especially present with respect to rest period claims given that rest
25 periods are not recorded.

26 16. Additionally, Plaintiff alleges that, as a result of Defendant’s failures to pay all
27 overtime wages, minimum wages, and meal period and rest period premiums, Defendant also
28 failed to issue accurate and itemized wage statements and timely pay all final wages at the time

1 of separation. As a result of these alleged Labor Code violations, Plaintiff also seeks PAGA
2 civil penalties on behalf of all aggrieved employees. In response, Defendant argues that the
3 wage statements always accurately reflected hours worked and amounts actually paid to
4 employees, and thus Defendant could not be found liable for wage statement penalties.
5 Defendant further argues that Plaintiff's underlying claims will fail and, as a result, the
6 derivative wage statement, waiting time, and PAGA claims will also fail. Defendant also
7 maintains that Plaintiff cannot show that the wage statement violations were "knowing and
8 intentional," or that the putative Class Members "suffer[ed] injury" as a result of the alleged
9 violations, as required by Labor Code section 226(e) for the imposition of wage statement
10 penalties. Defendant also maintains that its good faith defenses to Plaintiff's underlying claims
11 would preclude the recovery of waiting time penalties, which are only available for the "willful"
12 failure to pay wages, and that this Court would exercise its discretion to substantially reduce any
13 PAGA penalties awarded.

14 17. In connection with mediation, Defendant provided Plaintiff with electronic
15 timekeeping and payroll records for a sample of approximately 15% of the Class Members
16 spanning the entirety of the putative class period. Defendant also produced key data points and
17 all relevant policies in effect during the Class Period. Plaintiff then retained an expert with a
18 Ph.D. in economics to conduct a comprehensive analysis of the produced data to create a
19 detailed, class-wide exposure model for the claims at issue. On March 18, 2021, the Parties
20 participated in a mediation session with Jeffrey Krivis, Esq., an experienced and well-respected
21 wage and hour class action mediator. During mediation, the Parties exchanged divergent views
22 on Defendant's liability and exposure valuations, their legal positions, and the likelihood of
23 certification of Plaintiff's claims. At the conclusion of the mediation, Mr. Krivis made a
24 mediator's proposal for a settlement of all claims at issue on a class-wide basis, which the
25 Parties ultimately accepted. Over the following weeks, the Parties negotiated and formalized
26 the remaining terms of the Settlement, and executed the Settlement Agreement now before the
27 Court for preliminary approval.

28 ///

1 18. Attached hereto as **Exhibit 1** is a true and correct copy of the Parties' Joint
2 Stipulation of Class Action and PAGA Settlement and Release ("Settlement Agreement" or
3 "Settlement"). A true and correct copy of the Notice of Class Action Settlement ("Settlement
4 Notice") is attached to the Settlement Agreement as Exhibit A.

5 19. If the Court preliminarily approves this settlement, Defendant will pay a
6 Maximum Settlement Amount ("MSA") of \$1,375,000. Class Members can be identified using
7 Defendant's employment and payroll records. Defendant's records indicate that there were
8 approximately 490 Settlement Class Members at the time of mediation, rendering it
9 impracticable to bring all Class Members before the Court. Based on the estimated Net
10 Settlement Amount ("NSA"), average Individual Settlement Awards are projected to be
11 approximately \$1,670.08, plus additional sums for those employees who are also PAGA
12 Employees.

13 20. At the time of seeking final settlement approval, Plaintiff will apply for a service
14 award in the amount of \$5,000.00 for his service to the Settlement Class and his general release
15 of all claims. Plaintiff's requested enhancement payment is intended to recognize the significant
16 time and effort that he expended on behalf of the Settlement Class, including gathering relevant
17 documents for use in the lawsuit and providing factual information to his attorneys, holding
18 various phone calls with his attorneys to discuss the claims in the lawsuit and Defendant's
19 practices, assisting his attorneys in preparing for mediation, the significant risks Plaintiff
20 undertook by serving as the named plaintiff and filing a lawsuit against his current employer,
21 and the fact that he agreed to a general release of all claims subject to a waiver of Civil Code
22 section 1542.

23 21. My firm will also apply for an attorneys' fee award of up to one third of the
24 MSA (currently estimated at \$458,333.33), and up to \$30,000.00 in reimbursement for actual
25 litigation costs. Plaintiff submits that the requested fee is fair compensation for undertaking
26 complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. My
27 firm has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing
28 Plaintiff's claims, conducting legal research and analysis, reviewing class documents and data

1 produced by Defendant, extensively reviewing and evaluating the produced timekeeping and
2 payroll records and retaining an expert with a Ph.D. in economics to build a comprehensive
3 damages model, preparing for and attending mediation, negotiating and drafting the
4 Memorandum of Understanding, long-form Settlement Agreement, and Settlement Notice
5 documents, preparing this motion for preliminary approval, and otherwise litigating the case.
6 Class Counsel will also expend future attorney time attending the hearing on this Motion,
7 overseeing the Notice process, drafting the Final Approval Motion and supporting documents,
8 attending the Final Approval hearing, and completing other tasks, such as fielding questions
9 from Settlement Class Members.

10 22. Class Counsel carefully vetted the claims at issue, reviewed a representative
11 sampling of Class Member timekeeping and payroll data and all relevant policy documents, and
12 retained an expert with a Ph.D. in economics to assist in creating a comprehensive damages
13 model for Defendant's liability. Although the Parties engaged in substantial informal discovery
14 and information exchange prior to mediation, the Parties had agreed to refrain from engaging in
15 formal written and deposition discovery until after exhausting their settlement efforts at
16 mediation. Absent settlement, the Parties will be required to expend substantial time and
17 resources conducting extensive formal written and deposition discovery. Moreover, Plaintiff has
18 not yet filed for class certification, and thus, absent settlement, the Parties would face the
19 prospect of appeals in the wake of a disputed class certification ruling and/or an adverse
20 summary judgment ruling. Even if Plaintiff succeeded in certifying one or more classes, the
21 Parties would incur considerably more attorneys' fees and costs through a possible
22 decertification motion, trial, and possible appeal.

23 23. At the time of the proposed Settlement, Plaintiff had not filed his motion for
24 class certification. Had the Court certified any claims, Plaintiff anticipated that Defendant
25 would seek decertification. There was also a risk that Defendant would engage in a campaign
26 pursuant to *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796, to significantly reduce
27 the size of the putative class for a fraction of what Class Members are receiving through this
28 Settlement. Therefore, absent the Settlement, there was a serious risk that Plaintiff would be

unable to move forward on a class-wide basis, or that a significantly smaller class would exist than that which is currently before this Court for approval.

24. Plaintiff's expert's data analysis of Defendant's timekeeping and payroll data revealed that Defendant's rounding practice resulted in the putative class members losing an aggregate of 5,614 recorded hours of work during the putative class period. Even after taking into account an offset for the time rounded in the employees' favor, the putative class members were still underpaid an average of 4.12 hours *each* as a result of Defendant's rounding policies/practices. Using the weighted average minimum wage of \$11.62 applicable during the Class Period, Plaintiff calculated that Defendant owed the Class Members approximately \$46,921 in unpaid wages (2,019 hours x \$11.62 x 2 (liquidated damages)). However, Defendant argues that its rounding practice was neutral, both on its face and in practice, and that such a policy is lawful under *See's Candy*. Plaintiff therefore discounted the maximum potential exposure by 25% for the risk of non-certification and 40% for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of \$21,114.

25. Plaintiff's expert's data analysis revealed that approximately 80,527 work shifts over 6.0 hours included an unlawful first meal period, whether missed, short or untimely; and 6,975 shifts over 10.0 hours included an unlawful second meal period. Of those second meal period violations, 5,212 occurred on shifts that had also not been provided with a lawful first meal period. To avoid double counting meal period penalties for two violations that occurred on the same day, Plaintiff calculated Defendant's liability for second meal periods using only the 1,763 second meal period violations that took place on shifts for which the data reflects a lawful first meal period was provided. Accordingly, Plaintiff calculated Defendant's liability on this claim at \$1,275,494 (80,527 first meal violations + 1,763 unique second meal violations x \$15.50 avg. premium). However, Defendant maintains it has always provided its employees the opportunity to take legally compliant meal periods, and that any missing or late meal periods in the timekeeping records were the result of employee choice, rather than a result of any class-wide policy. Given these defenses, Plaintiff discounted the maximum exposure by 25% for the

1 risk of non-certification, and by an additional 30% for risk of losing on the merits, to arrive at
2 an estimated exposure of \$669,634.

3 26. Plaintiff's data analysis revealed that putative Class Members worked
4 approximately 220,023 shifts in excess of 3.5 hours during the relevant time period. Given
5 Plaintiff's allegation that Defendant maintained unlawful radio and on-premises rest period
6 policies/practices during the Class Period, Plaintiff asserts that each shift in excess of 3.5 hours
7 (i.e. for all shifts for which at least one rest period must be authorized and permitted) constituted
8 a shift in which a rest period violation occurred. Plaintiff therefore calculated Defendant's
9 maximum exposure for rest period violations at \$3,410,356 (220,023 shifts in excess of 3.5
10 hours x \$15.50 average rest premium). Defendant contends it authorized and permitted
11 employees to take all required rest periods, and argues that it did not discourage or impede
12 employees from taking rest periods in practice. Moreover, Defendant asserts that Plaintiff's
13 damages are severely overstated, since Plaintiff attributed a rest period violation to each rest-
14 period eligible shift during the Class Period, even though not all employees and not all locations
15 were required to carry radios on their persons. Defendant further argues that Plaintiff's rest
16 period claim is inherently unsuited for class treatment as it would require individualized
17 inquiries to determine whether a certain rest period was denied on a given shift, whether an
18 employee was required to carry a radio on any given shift, and whether a missed rest period was
19 the result of individual employee choice, which would devolve into an unmanageable series of
20 mini-trials, particularly since rest periods were not recorded and there was no other common
21 evidence of when rest periods were taken. Therefore, Plaintiff discounted Defendant's
22 maximum exposure by 65% for risk of non-certification, and by an additional 55% for risk of
23 being unsuccessful on the merits, to arrive at an estimated exposure of \$537,131.

24 27. According to Plaintiff's expert's data analysis, approximately 16,144 wage
25 statements were issued to 219 putative Class Members who worked for Defendant during the
26 relevant one-year statute of limitations period applicable to this claim. Given that wage
27 statement penalties are capped at \$4,000 per employee, Plaintiff calculates Defendant's
28 maximum wage statement liability at \$876,000. However, Defendant raises numerous defenses,

1 including that the alleged violations, if any, were not “knowing and intentional,” that Plaintiff
2 could not show that the Class Members “suffer[ed] injury” as a result of any alleged violations.
3 Further, Defendant contends that any derivative wage statement violations are not permissible
4 solely for Defendant’s alleged failure to pay meal and rest period premiums, and therefore
5 Plaintiff’s wage statement valuation is significantly overstated, as wage statement penalties
6 would only be recoverable for pay periods in which the rounding practice allegedly rounded in
7 the employer’s favor. Therefore, Plaintiff discounted the maximum exposure by 40% for the
8 risk of non-certification of the underlying claims and 40% for a risk of being unsuccessful on
9 the merits, including failing to prove the violations were “knowing and intentional,” that the
10 Class Members “suffer[ed] injury,” or that any derivative wage statement penalties were
11 recoverable at all in light of the holdings in *Maldonado* and *Naranjo*, for an estimated recovery
12 on this claim of \$315,360.

13 28. Based on data provided by Defendant, approximately 236 Class Members
14 separated their employment during the Class Period. Assuming Plaintiff can prove that each of
15 these employees was owed wages that were not paid at the time of their separation, Plaintiff
16 calculated a maximum exposure of \$877,920 (average waiting time penalty of \$3,720 (\$15.50
17 avg. hourly rate x 8 hours x 30 days)). Defendant maintains that waiting time penalties are not
18 appropriate because Plaintiff’s claims fail on the merits, and given its good-faith defenses,
19 Plaintiff cannot show that any failure by Defendant to pay all final wages was willful under 8
20 Cal. Code Regs. § 13520. Thus, Plaintiff discounted this claim by 45% for the risk of non-
21 certification and by an additional 60% for risk of being unsuccessful on the merits or failing to
22 establish willfulness, for an estimated recovery of \$193,142.

23 29. Plaintiff alleges that PAGA civil penalties would be recoverable for each pay
24 period in which he could prove an underlying Labor Code violation. According to Plaintiff’s
25 data analysis, putative class members worked a combined total of 16,144 pay periods during the
26 PAGA liability period in which an employee worked at least one shift in excess of 3.5 hours,
27 resulting in a rest period violation. Plaintiff therefore calculates Defendant’s maximum PAGA
28 exposure at \$1,614,400 (16,144 pay periods x \$100 per violation). However, these penalties are

1 mostly derivative of the underlying violations that Defendant vigorously disputes, both as to
2 certification and the merits. Plaintiff also recognizes that the Court has discretion to
3 substantially reduce any award of PAGA penalties. Therefore, Plaintiff discounted the
4 maximum figure by 45% to account for the risk that he would not prevail on the underlying
5 claims, and by an additional 75% for the possibility that this Court would reduce the PAGA
6 penalties, to arrive at an estimated exposure on this claim of \$221,980.

7 30. Using these estimated figures, Plaintiff estimated that the potential reasonable
8 recovery for the Settlement Class would be approximately \$1,958,361. Thus, the mediator's
9 proposal for a \$1,375,000.00 MSA represents approximately 70.21% of Plaintiff's reasonably
10 forecasted class-wide recovery, which is well within the range approved by courts as being fair,
11 reasonable and adequate, while also avoiding further expense and risk of proceeding towards
12 class certification and trial.

13 31. Concurrently with the filing of this motion, Plaintiff provided notice of the
14 proposed Settlement, as well as copies of the Motion for Preliminary Approval and all papers
15 filed in support hereof, to the LWDA. Attached hereto as **Exhibit 2** are true and correct copies
16 of Plaintiff's Settlement submission and the LWDA's confirmation of receipt.

17 I declare under penalty of perjury under the laws of the United States and the state of
18 California that the foregoing is true and correct. Executed on June 22, 2021, at El Segundo,
19 California.

20 
21 _____
22 Fletcher W. Schmidt
23
24
25
26
27
28

EXHIBIT 1

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Matthew K. Moen (SBN 305956)
mmoen@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Telephone: (424) 292-2350
Facsimile: (424) 292-2355

Attorneys for Plaintiff,
SANTOS ORELLANA

JACKSON LEWIS P.C.
Michael D. Thomas (SBN 226129)
Michael.Thomas@jacksonlewis.com
Eric J. Gitig (SBN 307547)
Eric.Gitig@jacksonlewis.com
725 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5408
Telephone: (213) 689-0404
Facsimile: (213) 689-0430

Attorneys for Defendant
SMARTE CARTE, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SANTOS ORELLANA, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

SMARTE CARTE, INC., a Minnesota
corporation; and DOES 1 through 100,

Defendants,

Case No.: 20STCV08890

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

**JOINT STIPULATION OF CLASS ACTION
AND PAGA SETTLEMENT AND RELEASE**

Complaint Filed: March 5, 2020

1 IT IS HEREBY STIPULATED, by and between Plaintiff SANTOS ORELLANA (“Plaintiff”),
2 individually and on behalf of all others similarly situated, on the one hand, and Defendant SMARTE
3 CARTE, INC. (“Defendant”) on the other hand, and subject to the approval of the Court, that this action
4 is hereby compromised and settled pursuant to the terms and conditions set forth in this Joint Stipulation
5 of Class Action and PAGA Settlement and Release (“Agreement,” “Settlement,” or “Stipulation of
6 Settlement”) and that the Court shall make and enter judgment, subject to the continuing jurisdiction of
7 the Court as set forth below, and subject to the definitions, recitals, and terms set forth herein which by
8 this reference become an integral part of this Stipulation of Settlement.

9 **DEFINITIONS**

10 1. “Action” means the putative class and representative action entitled *SANTOS ORELLANA,*
11 *as an individual and on behalf of all others similarly situated, Plaintiff, v. SMARTE CARTE, INC, a*
12 *Minnesota corporation; and DOES 1 through 100, Defendants,* Los Angeles County Superior Court Case
13 No. 20STCV08890.

14 2. “Class Counsel” means Paul K. Haines, Esq., Fletcher W. Schmidt, Esq., and Matthew K.
15 Moen, Esq. of the Haines Law Group, APC.

16 3. “Class Counsel Award” means the Court-approved attorneys’ fees for Class Counsel’s
17 litigation and resolution of the Action (not to exceed one-third [33 1/3%] of the Maximum Settlement
18 Amount), and the Court-approved costs incurred by Class Counsel in connection with this Action (not to
19 exceed Thirty-Thousand Dollars [\$30,000]).

20 4. “Class Information” or “Class List” means information regarding Class Members that
21 Defendant shall in good faith compile from its records and shall be authorized by the Court to transmit
22 in a secured manner to the Settlement Administrator. Class Information shall be transmitted in
23 Microsoft Excel format and shall include each Class Member’s: (i) full name; (ii) last known mailing
24 address; (iii) Social Security number; (iv) dates worked for Defendant in California during the Class
25 Period as a non-exempt employee; and (v) total workweeks worked for Defendant in California during
26 the Class Period as a non-exempt employee.

27 5. “Class Members” or “Settlement Class” means all current and former non-exempt
28 employees who worked for Defendant in California at any time during the Class Period.

1 6. “Class Period” means the period from March 5, 2016 to the date of the order granting
2 Preliminary Approval of the Settlement or July 16, 2021, whichever is first.

3 7. “Class Representative Service Award” means the Court-approved amount to be paid to
4 Plaintiff, in addition to Plaintiff’s Individual Settlement Award, in recognition of Plaintiff’s efforts and
5 risks in prosecuting the Action (not to exceed Five Thousand Dollars (\$5,000.00)).

6 8. “Complaint” means Plaintiff’s operative Second Amended Complaint or any subsequent
7 Complaints filed by Plaintiff in the Action.

8 9. “Defendant” means Smarte Carte, Inc.

9 10. “Defense Counsel” means Michael D. Thomas, Esq. and Eric J. Gitig, Esq. of Jackson
10 Lewis P.C.

11 11. “Effective Date” means the date when all of the following events have occurred: (1) the
12 Stipulation of Settlement has been executed by all Parties, Class Counsel and Defendant’s Counsel; (2)
13 the Court has given preliminary approval to the Stipulation of Settlement; (3) the Notice of Class Action
14 Settlement has been given to the putative members of the Settlement Class, providing them with an
15 opportunity to object to the terms of this Stipulation of Settlement or opt out of the settlement; (4) the
16 Court has held a formal fairness hearing and entered a final Order and Judgment certifying the
17 Settlement Class and approving the Stipulation of Settlement; and (5) fifteen (15) calendar days have
18 passed since the Court has entered a final Order and Judgment certifying the Settlement Class and
19 approving the Stipulation of Settlement; and (6) in the event there are objections to the Stipulation of
20 Settlement raised prior to or during the final fairness hearing which are not later withdrawn, the later of
21 the following events: five (5) business days after the period for filing any appeal, writ or other appellate
22 proceeding opposing the Court’s final Order approving the Stipulation of Settlement has elapsed without
23 any appeal, writ or other appellate proceeding having been filed; or, if any appeal, writ or other appellate
24 proceeding opposing the Court’s final Order approving the Stipulation of Settlement has been filed, five
25 (5) business days after any appeal, writ or other appellate proceedings opposing the Stipulation of
26 Settlement has been finally and conclusively dismissed with no right to pursue further remedies or relief.

1 12. “Employer’s Share of Payroll Taxes” means Defendant’s payroll taxes, including, but not
2 limited to FICA and FUTA, on the portion of the Individual Settlement Awards that constitutes alleged unpaid
3 wages, which Defendant shall be responsible for paying in addition to the Maximum Settlement Amount.

4 13. “Final Approval Hearing” means the hearing to be conducted by the Court after the filing
5 by Plaintiff of an appropriate motion and following appropriate notice to Class Members giving Class
6 Members an opportunity to request exclusion from the Settlement Class and Settlement and to object to
7 the Settlement, at which time Plaintiff shall request that the Court finally approve the Settlement, enter
8 the Final Order and Judgment, and take other appropriate action.

9 14. “Final Order and Judgment” means the order and judgment to be entered by the Court upon
10 granting final approval of the Settlement and this Stipulation of Settlement as binding upon the Parties and
11 Participating Class Members. A proposed Final Order and Judgment shall be mutually agreed upon by the
12 Parties and submitted to the Court concurrently with Plaintiff’s Motion for Final Approval of the Settlement.

13 15. “Final Report” means the report to be prepared by the Settlement Administrator (after the
14 expiration of the 180-day period in which Participating Class Members must cash/deposit their Individual
15 Settlement Payment checks) regarding the distribution of the Maximum Settlement Amount, including the
16 total amount that was cashed/deposited by Participating Class Members and the total amount of any unpaid
17 residue or unclaimed or abandoned funds pursuant to California Code of Civil Procedure section 384.

18 16. “Individual PAGA Award” means the amount payable from the PAGA Payment to each
19 PAGA Employee.

20 17. “Individual Settlement Award” means the amount payable from the Net Settlement
21 Amount to each Participating Class Member.

22 18. “Maximum Settlement Amount” means the maximum amount Defendant shall have to
23 pay in connection with this Settlement, by way of a common fund, which shall be inclusive of all
24 Individual Settlement Awards to Participating Class Members, the Class Counsel Award, the Class
25 Representative Service Award, PAGA Payment, and Settlement Administration Costs. Subject to Court
26 approval and the terms of this Stipulation of Settlement, the Maximum Settlement Amount Defendant
27 shall be required to pay is One Million Three Hundred Seventy-Five Thousand Dollars (\$1,375,000.00).
28

1 19. “Net Settlement Amount” means the Maximum Settlement Amount, less the Class Counsel
2 Award, Class Representative Service Award, PAGA Payment, and Settlement Administration Costs.

3 20. “Notice of Objection” means a Class Member’s valid and timely submission of a written
4 objection to the Settlement. For an objection to be valid, it must include: (a) the objector’s full name,
5 signature, address, telephone number, and the last four digits of his/her Social Security number, (b) a
6 written statement of all grounds for the objection accompanied by any legal support for such objection, and
7 (c) copies of any papers, briefs, or other documents upon which the objection is based. At no time shall any
8 of the Parties, Class Counsel, or Defense Counsel seek to solicit or otherwise encourage or discourage Class
9 Members from submitting a Notice of Objection or filing an appeal from the Final Order and Judgment. In
10 the discretion of the Court, any Class Member may orally object at the final approval hearing, at their
11 own expense, without faxing or mailing a Notice of Objection.

12 21. “PAGA” means the California Private Attorneys’ General Act of 2004, California Labor
13 Code §§ 2698, *et seq.*

14 22. “PAGA Employees” means those Class Members who worked as non-exempt employees
15 for Defendant in California during the PAGA Period.

16 23. “PAGA Payment” means the amount of Fifty Thousand Dollars (\$50,000.00), subject to
17 Court approval, to be paid from the Maximum Settlement Amount for satisfaction of Plaintiff’s and
18 PAGA Employees’ claims under PAGA.

19 24. “PAGA Period” means the period from March 5, 2019 through the date of Preliminary
20 Approval of the Settlement or July 16, 2021, whichever is first.

21 25. “Participating Class Members” means Plaintiff and all other Class Members who do not
22 submit a valid and timely Request for Exclusion.

23 26. “Parties” means Plaintiff and Defendant.

24 27. “Plaintiff” means Santos Orellana.

25 28. “Preliminary Approval Order” means the order to be issued by the Court approving and
26 authorizing the mailing of the Settlement Notice by the Settlement Administrator, setting the date of the
27 Final Approval Hearing and granting preliminary approval of the Settlement set forth in this Stipulation
28 of Settlement, among other things. A proposed Preliminary Approval Order shall be mutually agreed

upon by the Parties and submitted to the Court concurrently with Plaintiff's Motion for Preliminary Approval of the Settlement.

29. "Released Claims" includes all claims under state, federal or local law, whether statutory, common law or administrative law, arising out of or related to allegations set forth in the operative Complaint, including but not limited to claims for minimum wage violations, failure to pay overtime wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, unfair competition and all other alleged violations of the California Business and Professions Code section 17200, *et seq.*, and alleged violations of PAGA, including, but not limited to, injunctive relief, punitive damages, liquidated damages, penalties of any nature, including civil penalties under PAGA, interest, fees, including fees under California Code of Civil Procedure section 1021.5; costs; and all other claims and allegations made or which could have been made in the Action based on the facts and allegations pled in the operative Complaint during the Class Period.

30. "Released Parties" means Defendant and all its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be liable for any of the Released Claims, and Defendant's counsel of record in the Action.

31. "Request for Exclusion" means a written statement submitted by a Class Member indicating a request to be excluded from the Settlement. The Request for Exclusion must be in writing and must: (a) be signed by the Class Member; (b) contain the name, address, telephone number, and the last four digits of the Social Security number of the Class Member requesting exclusion; (c) clearly state that the Class Member does not wish to be included in the Settlement; (d) be returned by fax or mail to the Settlement Administrator at the specific address and/or facsimile number and be postmarked or faxed on or before the Response Deadline. The date of the fax or postmark on the return mailing envelope will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. A Class Member who does not request exclusion from the Settlement will be deemed a Participating Class Member and will be bound by all terms of the Settlement if the Settlement is granted final approval by the Court. No later than ten (10) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties a complete list of all Class Members who submitted a timely and valid Request for Exclusion.

32. “Response Deadline” means the deadline by which Class Members must postmark or fax to the Settlement Administrator a valid Request for Exclusion, objection, or Workweek Dispute. The Response Deadline will be sixty (60) calendar days from the initial mailing of the Settlement Notices by the Settlement Administrator unless the 60th day falls on a Sunday, state or federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline may also be extended by express agreement between Plaintiff and Defendant. Under no circumstances, however, will the Administrator have the authority to extend the deadline for Class Members to submit a Request for Exclusion or objection to the settlement.

33. “Settlement” means the final and complete disposition of the Action pursuant to this Stipulation of Settlement.

34. “Settlement Administrator” or “Administrator” means Phoenix Settlement Administrators, or another third-party class action settlement administrator agreed to by the Parties and approved by the Court for purposes of administering this settlement. The Parties each represent that they will not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

35. “Settlement Administration Costs” means the reasonable costs and fees of administering the Settlement to be paid from the Maximum Settlement Amount, including, but not limited to: (i) printing, mailing and re-mailing (if necessary) of Settlement Notices to Class Members; (ii) preparing and submitting to Participating Class Members and government entities all appropriate tax filings and forms; (iii) computing the amount of and distributing Individual Settlement Awards, the Class Representative Service Award, the Class Counsel Award; (iv) processing and validating Requests for Exclusion (if any); (v) establishing a Qualified Settlement Fund, as defined by the Internal Revenue Code; (vi) calculating and remitting to the appropriate government agencies all employer and employee payroll tax obligations arising from the Settlement and preparing and submitting filings required by law in connection with the payments required by the Settlement; (vii) transmitting uncashed Individual Settlement Awards to the California State Controller’s Unclaimed Property Fund; and (viii) preparing and providing the notice regarding the Settlement required under the Class Action Fairness Act.

36. “Settlement Notice” means the Notice of Class Action Settlement, substantially in the form attached as **Exhibit A**, which shall be subject to Court approval and which the Settlement Administrator shall mail to each Class Member explaining the terms of this Stipulation of Settlement.

37. “Workweeks” means the number of weeks worked by each Class Member for Defendant as a non-exempt employee in California during the Class Period, based on Defendant’s records. In the absence of fraud or gross negligence, Defendant’s records shall be presumed accurate.

38. “Workweek Dispute” means a written statement that a Class Member disputes the number of Workweeks listed on his/her Settlement Notice. Any such Workweek Dispute must be faxed or mailed to the Settlement Administrator by the Response Deadline. The date of the fax or postmark on the mailing envelope will be the exclusive means to determine whether a Workweek Dispute has been timely submitted. A valid Workweek Dispute must be in writing and contain: (i) the Class Member’s full name, signature, address, telephone number, and the last four digits of his/her Social Security number; (ii) the number of Workweeks the Class Member contends is correct; and (iii) any evidence supporting his/her contention. The Workweeks identified for each Class Member in the Class List will be presumed to be correct unless a particular Class Member proves otherwise to the Settlement Administrator by credible evidence. All Workweek disputes will be resolved and decided by the Settlement Administrator. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the Workweek Dispute to the Court for a final determination.

39. “Workweek Value” means the value of each compensable Workweek, as determined by the formula set forth herein.

RECITALS

40. Procedural History.

a. On March 5, 2020, Plaintiff filed a putative class action Complaint against Defendant on behalf of himself and all others similarly situated in the Superior Court of the State of California entitled *SANTOS ORELLANA v. SMARTE CARTE, INC, et al.*, Los Angeles County Superior Court Case No. 20STCV08890. The Complaint set forth the following six causes of action: (1) failure to pay all overtime wages; (2) minimum wage violation; (3) meal period violations; (4) rest period violations; (5) wage statement violations; and (6) unfair competition.

1 b. Also on March 5, 2020, Plaintiff electronically submitted a letter to the California
2 Labor and Workforce Development Agency (“LWDA”), pursuant to PAGA, to notify the LWDA of
3 Defendant’s alleged violations of the Labor Code with respect to Plaintiff and other Class Members.

4 c. On May 11, 2020, Plaintiff filed a First Amended Complaint (“FAC”) which
5 alleged the same six causes of action asserted in the original Complaint, plus a newly asserted seventh
6 cause of action for civil penalties under PAGA.

7 d. On March 18, 2021, the Parties participated in a full-day mediation before Jeff
8 Krivis, Esq., a well-respected wage and hour class action mediator, at which time the Parties reached
9 agreement on the material terms of a proposed class action and PAGA settlement that would fully
10 resolve the Action, which they memorialized in a signed Memorandum of Understanding, made subject
11 to the Parties entering into a more comprehensive written settlement agreement.

12 e. On June 9, 2021, Plaintiff filed a Second Amended Complaint (“SAC”) which
13 alleged the same seven causes of action asserted in the FAC, plus a newly asserted eighth cause of action
14 for waiting time penalties.

15 41. Benefits of Settlement to Plaintiff and the Class Members. Plaintiff and Class Counsel
16 recognize the expense and length of continued proceedings necessary to litigate Plaintiff’s disputes in
17 the Action through trial and through any possible appeals. Plaintiff has also taken into account the
18 uncertainty and risks of the outcome of further litigation, and the difficulties and delays inherent in such
19 litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish
20 liability for the claims asserted in the Action, both generally and in response to Defendants’ defenses
21 thereto, and the difficulties in establishing damages, penalties, restitution and other relief sought in the
22 Action. Plaintiff and Class Counsel also have taken into account Defendants’ agreement to enter into a
23 settlement that confers substantial benefits upon the Class Members. Based on the foregoing, Plaintiff
24 and Class Counsel have determined that the Settlement set forth in this Stipulation of Settlement is fair,
25 adequate, and reasonable and is in the best interests of all Class Members.

26 42. Defendant’s Reasons for Settlement. Defendant has concluded that further defense of the
27 Action would be protracted and expensive. Substantial amounts of Defendant’s time, energy, and
28 resources have been, and unless this Settlement is completed, shall continue to be, devoted to the

1 defense of the claims asserted by Plaintiff. Defendant has also taken into account the risks of further
2 litigation in reaching their decision to enter into this Settlement. Even though Defendant contends it is
3 not liable for any of the claims alleged by Plaintiff in the Action and deny any liability whatsoever,
4 Defendant nonetheless, has agreed to settle in the manner and upon the terms set forth in this Stipulation
5 of Settlement and to fully and finally put to rest the claims alleged in this Action. Defendant has
6 asserted and continues to assert that the claims alleged by Plaintiff have no merit and do not give rise to
7 any liability, damages, restitution, penalties, or other payments. This Stipulation of Settlement is a
8 compromise of disputed claims. Nothing contained in this Stipulation of Settlement, no documents
9 referred to herein, and no action taken to carry out this Stipulation of Settlement, shall be construed or
10 used as an admission by or against Defendant as to the merits or lack thereof of the claims asserted in
11 the Action. Defendant contends that it has complied with all applicable state, federal and local laws. In
12 the event this Settlement does not obtain final approval, Defendant retains all rights it has to defend
13 itself in this matter and to take any actions in defense of itself that is available to Defendant.

14 **CLASS CERTIFICATION**

15 43. Solely for purposes of settling the Action, and not for purposes of class certification
16 should the Settlement not be approved or for any other reason, the Parties stipulate and agree that the
17 requisites for establishing class certification with respect to the Settlement Class have been met and are
18 met. More specifically, for purposes of settlement only, the Parties stipulate and agree that:

19 a. The Settlement Class is ascertainable and so numerous as to make it impracticable
20 to join all Class Members;

21 b. There are common questions of law and fact including, but not limited to, the
22 following:

23 i. Whether Defendant compensated Class Members the statutory minimum
24 wage for all hours worked;

25 ii. Whether Defendant compensated Class Members for all overtime hours
26 worked;

27 iii. Whether Defendant provided meal periods to Class Members and/or paid
28 penalties to Class Members for missed meal periods;

iv. Whether Defendant provided rest periods to Class Members and/or paid penalties to Class Members for missed rest periods;

v. Whether Defendant furnished Class Members with accurate itemized wage statements; and

vi. Whether Defendant paid timely final wages to Class Members who separated from their employment with Defendant.

c. The Class Representative's claims are typical of the claims of the Settlement Class;

d. The Class Representative and Class Counsel will fairly and adequately protect the interests of the Settlement Class;

e. The prosecution of separate actions by individual members of the Settlement Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct; and

f. Questions of law and fact common to the members of the Settlement Class predominate over any questions affecting any individual Class Member, and a class action is superior to other available means for the fair and efficient adjudication of the controversy.

44. **Should this Settlement not be approved or be terminated, all stipulations set forth in the immediately preceding Paragraph 43 shall be null and void and shall not be admissible for any purpose whatsoever.**

TERMS OF SETTLEMENT

NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

45. Binding Settlement. This Settlement shall bind the Parties and all Participating Class Members, subject to the terms and conditions hereof and the Court's approval.

46. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments specified herein, and Class Members are not relying on any statement or representation by the Parties, Class Counsel or Defense Counsel in this regard. Participating Class Members and Class Counsel understand and agree that they shall be responsible for the payment of all taxes and penalties assessed on the payments specified herein, and shall hold the Parties, Class Counsel and Defense Counsel free and harmless

1 from and against any claims resulting from treatment of such payments as non-taxable, including the
2 treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.

3 47. Circular 230 Disclaimer. The Parties acknowledge and agree that (1) no provision of this
4 Stipulation of Settlement, and no written communication or disclosure between or among the Parties,
5 Class Counsel or Defense Counsel and other advisers, is or was intended to be, nor shall any such
6 communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning
7 of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging
8 party (a) has relied exclusively upon his, her, or its own, independent legal and tax counsel for advice
9 (including tax advice) in connection with this Stipulation of Settlement, (b) has not entered into this
10 Stipulation of Settlement based upon the recommendation of any other party or any attorney or advisor to
11 any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or
12 adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and
13 (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of
14 any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding)
15 upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction,
16 including any transaction contemplated by this Stipulation of Settlement.

17 48. Preliminary Approval of Settlement. Class Counsel will reserve a date for a hearing on
18 Plaintiff's Motion for Preliminary Approval to take place at a time mutually agreed to by the Parties so
19 that the Parties may request provisional certification of the Settlement Class for settlement purposes only
20 and the setting of a Final Approval Hearing. The Parties agree to work diligently and cooperatively to
21 have this Settlement presented to the Court for preliminary approval. The proposed Order granting
22 Plaintiff's Motion for Preliminary Approval shall be mutually agreed to by the Parties prior to Plaintiff
23 submitting the proposed Order to the Court. Plaintiff will also provide Defendant with the opportunity
24 to review and comment upon drafts of the notice of motion and memorandum of points and authorities
25 to be filed in connection with his Motion for Preliminary Approval at least three (3) days prior to filing
26 such motion with the Court.

1 49. Release of Claims.

2 a. Release by All Participating Class Members. All Participating Class Members,
3 including Plaintiff, shall be deemed to have released their respective Released Claims against the Released
4 Parties upon the date on which the payment of the Maximum Settlement Amount is made by Defendant.
5 Plaintiff and Class Members who do not Request Exclusion will be deemed to have fully, finally and forever
6 released, settled, compromised, relinquished, and discharged with respect to all of the Released Parties for
7 any and all Released Claims. The Settlement Class and each Class Member who has not submitted a valid
8 Request for Exclusion, fully releases and discharges the Released Parties for the Released Claims.

9 b. Additional Release by All PAGA Employees. In addition to the release of Released
10 Claims against the Released Parties made by all Participating Class Members, upon the date on which the
11 payment of the Maximum Settlement Amount is made by Defendant, all PAGA Employees shall be
12 deemed to have released their respective PAGA claims against the Released Parties, which include any and
13 all claims under the PAGA against the Released Parties that were or could have been pled based on the
14 factual allegations of the operative Complaint, including but not limited to claims seeking civil penalties
15 for minimum wage violations, failure to pay overtime wages, meal period violations, rest period violations,
16 wage statement violations, and waiting time penalties. This includes, but is not limited to, claims for
17 violation of California Labor Code sections 201-204, 226, *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2,
18 1197, 1198, 2698, *et seq.* The Parties agree that there is no statutory right for any PAGA Employee to
19 opt out or otherwise exclude himself or herself from the PAGA Payment and the associated release of
20 claims and rights under PAGA.

21 c. Additional Release and Waiver of Claims by Plaintiff. In addition to the release of
22 Released Claims against the Released Parties made by all Participating Class Members, as set forth above,
23 Plaintiff, in his individual capacity, agrees to release the Released Parties from any and all claims, known
24 and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other
25 source of law, arising as of the date of execution of this Agreement including but not limited to claims
26 arising from or related to his employment with Defendants and his compensation while an employee of
27 Defendant ("Plaintiff's Released Claims"). Plaintiff's Released Claims include, but are not limited to, all
28 of the Released Claims and any other claims arising under the California Labor Code; any claim arising

1 out of the California common law of contract; the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and
2 federal common law; all claims for lost wages and benefits, emotional distress, retaliation, punitive
3 damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination,
4 harassment, and wrongful termination, including but not limited to, 42 U.S.C. section 1981, Title VII of
5 the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment
6 Act, the California Fair Employment and Housing Act, the California Labor Code, and the law of contract
7 and tort. This release excludes the release of claims not permitted by law.

8 Plaintiff's Released Claims include all claims, whether known or unknown. Even if Plaintiff
9 discovers facts in addition to or different from those that he now knows or believes to be true with respect
10 to the subject matter of Plaintiff's Released Claims, those claims will remain released and forever barred.
11 To effect a full and complete general release as described above, Plaintiff expressly waives and
12 relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California, and does so
13 understanding and acknowledging the significance and consequence of specifically waiving section 1542.
14 Section 1542 of the Civil Code of the State of California states as follows:

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

19 Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release
20 and discharge of the Released Parties, Plaintiff expressly acknowledges this Stipulation of Settlement is
21 intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in
22 Plaintiff's favor at the time of signing this Stipulation of Settlement, and that this Stipulation of Settlement
23 contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff has read this
24 Stipulation of Settlement, including this waiver of California Civil Code section 1542, and that Plaintiff has
25 consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Stipulation
26 of Settlement and specifically about the waiver of section 1542, and that Plaintiff understands this
27 Stipulation of Settlement and the section 1542 waiver, and so Plaintiff freely and knowingly enters into this
28 Stipulation of Settlement. Plaintiff further acknowledges that Plaintiff later may discover facts different

1 from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or
2 described in this Stipulation of Settlement, and even so Plaintiff agrees that the releases and agreements
3 contained in this Stipulation of Settlement shall remain effective in all respects notwithstanding any later
4 discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in
5 connection with the true facts involved in the matters, disputes, or controversies released or described in this
6 Stipulation of Settlement or with regard to any facts now unknown to Plaintiff relating thereto.

7 50. Settlement Administration.

8 a. Production of Class List. Within twenty-one (21) calendar days of entry of the
9 Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class List
10 for purposes of mailing the Settlement Notices to Class Members. The Settlement Administrator shall
11 not be permitted to share any Class Information included in the Class List with Plaintiff, Class Counsel,
12 or any other individual or entity absent express approval by Defendant or Defense Counsel.

13 b. Notice by First Class U.S. Mail. Upon receipt of the Class List, the Settlement
14 Administrator shall perform a search based on the National Change of Address Database maintained by
15 the United States Postal Service to update and correct any known or identifiable address changes.
16 Within fourteen (14) calendar days after receiving the Class List from Defendants, as provided herein,
17 the Settlement Administrator shall mail copies of the Settlement Notice to all Class Members via regular
18 First Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the
19 current mailing address for each Class Member. The address identified by the Settlement Administrator
20 as the current mailing address shall be presumed to be the most current mailing address for each Class
21 Member. The Parties agree that this procedure for notice provides the best notice practicable to Class
22 Members and fully complies with due process.

23 c. Undeliverable Settlement Notices. Any Settlement Notice returned to the
24 Settlement Administrator as non-deliverable on or before the Response Deadline shall be re-mailed to the
25 forwarding address affixed thereto within five (5) calendar days of receipt of the returned Settlement
26 Notice by the Settlement Administrator. If no forwarding address is provided, the Settlement
27 Administrator shall attempt to determine a correct address by the use of skip-tracing, or other type of
28 automated search, using the name, address and/or Social Security number of the Class Member involved,

1 and shall then perform a re-mailing to the Class Member whose Settlement Notice was returned as non-
2 deliverable within five (5) calendar days of receipt of the returned Settlement Notice by the Settlement
3 Administrator, assuming another mailing address is identified by the Settlement Administrator. Class
4 Members who are sent a re-mailed Settlement Notice shall have their Response Deadline, including their
5 deadline to submit a Workweek Dispute, extended by ten (10) calendar days from the date the Settlement
6 Administrator re-mails the Settlement Notice. If these procedures are followed, notice to Class Members
7 shall be deemed to have been fully satisfied, and if the intended recipient of the Settlement Notice does not
8 receive the Settlement Notice, the intended recipient shall nevertheless remain a Class Member and shall
9 be bound by all terms of the Settlement and the Final Order and Judgment.

10 d. Determination of Individual Settlement Awards. The Settlement Administrator
11 shall determine the eligibility for, and the amounts of, each Individual Settlement Award under the terms
12 of this Stipulation of Settlement. The Settlement Administrator's determination of the eligibility for and
13 amount of each Individual Settlement Award shall be binding upon the Class Members and the Parties. In
14 the absence of fraud or gross negligence, Defendant's records shall be presumed accurate.

15 e. Disputes Regarding Administration of Settlement. Any dispute not resolved by the
16 Settlement Administrator concerning the administration of the Settlement shall be resolved by the Court.

17 f. Monitoring and Reviewing Settlement Administration. The Parties have the right
18 to monitor and review the administration of the Settlement to verify that the monies allocated under the
19 Settlement are distributed in the correct amount, as provided for in this Stipulation of Settlement.

20 g. Certification Reports Regarding Individual Settlement Payment Calculations. The
21 Settlement Administrator will provide Defense counsel and Class Counsel a weekly report which certifies: (a)
22 the number of Class Members who have submitted valid Requests for Exclusion or objections; and (b) whether
23 any Class Member has submitted a challenge to any information contained in the Settlement Notice, including
24 but not limited to the number of Class Members who have submitted a Workweek Dispute. Additionally, the
25 Settlement Administrator will provide to Defense counsel and Class Counsel any updated reports regarding
26 the administration of the Settlement Agreement as needed or requested. The Settlement Administrator shall
27 not identify the name, address, or Social Security Number of any Class Member to Plaintiff, Class Counsel,
28 or any other individual or entity absent express approval by Defendant or Defense Counsel.

1 h. Best Efforts. The Parties agree to use their best efforts to carry out the terms of
2 this Settlement.

3 51. Funding of Maximum Settlement Amount. The Maximum Settlement Amount shall be
4 paid by Defendant in one lump sum payment within fifteen (15) calendar days after the Effective Date.
5 Defendant shall provide the Maximum Settlement Amount to the Settlement Administrator in any feasible
6 manner, including, but not limited to, by way of a wire transfer. If this Settlement is not finally approved
7 by the Court in full, or is terminated, rescinded, canceled or fails to become effective for any reason, or if
8 the Effective Date does not occur, then no portion of the Maximum Settlement Amount shall be paid.

9 a. Escalator Clause. Defendant represented that there were approximately 490
10 Settlement Class members as of the date of mediation. If, as of the close of the Class Period, the number
11 of Class Members has increased by fifteen percent (15%) or more (*i.e.*, if there are 564 or more putative
12 class members), then Defendant shall increase the Total Settlement Amount on a proportional basis
13 (*e.g.*, if the actual number of putative class members is 20% greater than 490, Defendant would increase
14 the Total Settlement Amount by 20%).

15 52. Allocation of Maximum Settlement Amount.

16 a. Individual Settlement Awards. Class Members shall not be required to submit a
17 claim in order to receive a share of the Net Settlement Amount, and no portion of the Maximum
18 Settlement Amount shall revert to Defendant or result in an unpaid residue. Individual Settlement Awards
19 shall be paid by the Settlement Administrator from the Net Settlement Amount after receipt of the
20 Maximum Settlement Amount from Defendant, in accordance with the terms and formulas set forth
21 herein. Individual Settlement Award payments shall be mailed by the Settlement Administrator by regular
22 First Class U.S. Mail to each Participating Class Member's last known mailing address within fifteen (15)
23 calendar days after Defendants provide the Settlement Administrator with the Maximum Settlement
24 Amount. Prior to mailing the Individual Settlement Awards, the Settlement Administrator shall perform a
25 search based on the National Change of Address Database maintained by the United States Postal Service
26 to update and correct any known or identifiable address changes.

27 i. Each Participating Class Member's Individual Settlement Award shall be
28 calculated solely by the Settlement Administrator as follows:

1 (1) Ten percent of the Net Settlement Amount shall be designated as
2 the “Wage Statement Amount.” Each Participating Class Member who worked for Defendant at any
3 time from March 5, 2019 to the date of the order granting Preliminary Approval of the Settlement or
4 July 16, 2021, whichever is first, shall receive a portion of the Wage Statement Amount proportionate to
5 the number of workweeks that he or she worked during the aforementioned time period.

6 (2) Ten percent of the Net Settlement Amount shall be designated as
7 the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal, pro-rata shares to
8 each Participating Class Member who separated their employment from Defendant at any time from
9 March 5, 2017 to the date of the order granting Preliminary Approval of the Settlement or July 16, 2021,
10 whichever is first.

11 (3) The Settlement Administrator will then calculate the Workweek
12 Value by dividing the remainder of the Net Settlement Amount by the total number of Workweeks for
13 the entire Settlement Class during the Class Period;

14 (4) To determine each Class Member’s estimated Individual Settlement
15 Award, the Settlement Administrator will multiply the Workweek Value by the number of Workweeks
16 worked by each Class Member, and add it to any entitlement from the Wage Statement Amount and/or
17 Waiting Time Amount. All Class Members will be entitled to payment for at least one Workweek.

18 (5) Should any of the following occur, the Settlement Administrator will
19 proportionately increase the estimated Individual Settlement Award of each Participating Class Member to
20 ensure that the entire Net Settlement Amount is distributed to Participating Class Members: (i) any Class
21 Members submit timely and valid, or otherwise accepted, Requests for Exclusion following the provision of
22 Settlement Notices and expiration of the Response Deadline; (ii) the Court approves a Class Representative
23 Service Award in an amount less than that requested by Plaintiff, as detailed herein; (ii) the Court approves a
24 Class Counsel Award in an amount less than that requested by Plaintiff, as detailed herein; and/or (iii) the Court
25 approves Settlement Administration Costs in an amount less than that requested by Plaintiff, as detailed herein.

26 ii. Individual Settlement Award payments shall be made by check and shall
27 be made payable to each Participating Class Member as set forth in this Stipulation of Settlement.
28

1 iii. For tax purposes, Individual Settlement Awards shall be allocated as
2 follows: one-third (33 1/3%) as alleged unpaid wages subject to all applicable tax withholdings; one-third
3 (33 1/3%) as alleged unpaid interest not subject to payroll tax withholdings; and one-third (33 1/3%) as
4 alleged non-wage penalties not subject to payroll tax withholdings. The Settlement Administrator shall
5 issue an IRS Form W-2 to each Participating Class Member for the portion of each Individual Settlement
6 Award payment allocated as alleged unpaid wages and subject to all applicable tax withholdings. The
7 Settlement Administrator shall issue an IRS Form 1099 to each Participating Class Member for the portion
8 of each Individual Settlement Award payment allocated as alleged unpaid non-wage penalties and interest
9 and not subject to payroll tax withholdings. The Settlement Administrator shall calculate the amount of
10 the Employer's Share of Payroll Taxes and shall remit and report the applicable portions of the payroll tax
11 payment to the appropriate taxing authorities in a timely manner. Defendant will be responsible for paying
12 its share of the Payroll Taxes and this amount will not be deducted from the Maximum Settlement Amount.

13 iv. Any Individual Settlement Payment check issued by the Settlement
14 Administrator to Participating Class Members will be valid and negotiable for one hundred eighty (180)
15 calendar days from the date it is issued. After the expiration of the 180-day period, the Settlement
16 Administrator will distribute the total amount of any unpaid residue or unclaimed funds to the Controller of
17 the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section
18 1500, *et seq.*, in the name of the Participating Class Member to whom the check was issued, until such time
19 that such Participating Class Members claim their property. After this process is completed, the Settlement
20 Administrator will prepare the Final Report regarding the distribution of the Maximum Settlement Amount,
21 including the total amount that was cashed/deposited by Participating Class Members and the total amount
22 of any unpaid residue or unclaimed or abandoned funds that was distributed to the State Controller.

23 v. In the event a Participating Class Member fails to cash/deposit his or her
24 Individual Settlement Payment check, the Participating Class Member shall nevertheless remain bound
25 by the Settlement.

26 vi. All monies received by Participating Class Members under the Settlement
27 which are attributable to wages shall constitute income to such Participating Class Members solely in the
28 year in which such monies actually are received by the Participating Class Members. It is expressly

1 understood and agreed that the receipt of Individual Settlement Awards shall not entitle any Participating
2 Class Member to additional compensation or benefits under any collective bargaining agreement or under
3 any bonus, contest or other compensation or benefit plan or agreement in place during the period covered
4 by the Settlement, nor shall it entitle any Participating Class Member to any increased pension and/or
5 retirement, or other deferred compensation benefits. It is the intent of the Parties that Individual Settlement
6 Awards provided for in this Stipulation of Settlement are the sole payments to be made by Defendant to
7 Participating Class Members in connection with this Settlement, with the exception of Plaintiff, and that the
8 Participating Class Members are not entitled to any new or additional compensation or benefits as a result
9 of having received the Individual Settlement Awards. Furthermore, the receipt of Individual Settlement
10 Awards by Participating Class Members shall not, and does not, by itself establish any general, special, or
11 joint employment relationship between and among the Participating Class Member(s) and Defendant.

12 b. Class Representative Service Award. For the purposes of this Settlement only,
13 the Parties agree to the designation of Plaintiff Santos Orellana as Class Representative. In recognition
14 of his time and effort in bringing and presenting the Action, and for agreeing to the general release of all
15 claims, including a waiver of California Civil Code section 1542, as provided in Paragraph 49(c) above,
16 Plaintiff shall request a Class Representative Service Award not to exceed Five Thousand Dollars
17 (\$5,000.00), provided Plaintiff sign this Stipulation of Settlement. Plaintiff's request for such Class
18 Representative Service Award shall be subject to approval from the Court. The Court-approved Class
19 Representative Service Award shall be paid to Plaintiff from the Maximum Settlement Amount and shall
20 be mailed by the Settlement Administrator to Plaintiff on the same date that the Settlement
21 Administrator mails Individual Settlement Award payments to Participating Class Members. The Class
22 Representative Service Award will be in addition to Plaintiff's Individual Settlement Payment paid
23 pursuant to the Settlement. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff for
24 his Class Representative Service Award. Plaintiff shall be solely and legally responsible to pay any and
25 all applicable taxes on his Class Representative Service Award and shall hold harmless Defendant, Class
26 Counsel and Defense Counsel from any claim or liability for taxes, penalties, or interest arising as a
27 result of payment of the Class Representative Service Award. Any amount requested by Plaintiff for the
28 Class Representative Service Award and not awarded by the Court shall become part of the Net

Settlement Amount and shall be distributed to Participating Class Members as part of the Individual Settlement Awards.

c. Class Counsel Award. Class Counsel shall be entitled to request attorneys' fees in an amount not to exceed one-third (33 1/3%) of the Maximum Settlement Amount, which amounts to Four Hundred Fifty-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$458,333.33). In addition, Class Counsel shall also be entitled to request an award of costs associated with Class Counsel's prosecution of the Action not to exceed Thirty-Thousand Dollars (\$30,000.00). Class Counsel's request for such attorneys' fees and costs shall be subject to approval from the Court. Any amount requested by Plaintiff for the Class Counsel Award and not awarded by the Court shall become part of the Net Settlement Amount and shall be distributed to Participating Class Members as part of the Individual Settlement Awards. The Court-approved Class Counsel Award shall be paid to Class Counsel from the Maximum Settlement Amount and shall be mailed by the Settlement Administrator to Class Counsel on the same date that the Settlement Administrator mails Individual Settlement Award payments to Participating Class Members. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Class Counsel Award. Class Counsel shall provide the Settlement Administrator with properly completed and signed copies of IRS Form W-9 in order for the Settlement Administrator to process the Class Counsel Award approved by the Court. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel for the Class Counsel Award.

d. PAGA Payment. Subject to Court approval, the Parties agree that the amount of Fifty Thousand Dollars (\$50,000.00) will be paid from the Maximum Settlement Amount in satisfaction of Plaintiff's and PAGA Employees' claims under PAGA. Pursuant to PAGA, seventy five percent (75%) or Thirty Seven Thousand Five Hundred Dollars (\$37,500.00) of this sum will be paid to the LWDA and twenty five percent (25%) or Twelve Thousand Five Hundred Dollars (\$12,500.00) will be distributed to the PAGA Employees (*i.e.*, those Class Members who worked for Defendant as non-exempt employees during the PAGA Period). The Settlement Administrator will use the following formula to calculate the Individual PAGA Awards for the PAGA Employees: Individual PAGA Award = [total value of PAGA Payment to be distributed to PAGA Employees, *i.e.*, \$12,500.00] × [pay periods worked by the individual PAGA Employee during the PAGA Period ÷ total pay periods worked by all

PAGA Employees during the PAGA Period]. All portions of the PAGA Payment paid to the PAGA Employees shall be allocated as alleged penalties and not subject to payroll tax withholdings, for which the Settlement Administrator shall issue an IRS Form 1099. Any Court-awarded PAGA Payments will be paid to the Labor and Workforce Development Agency and PAGA Employees from the Maximum Settlement Amount and shall be mailed by the Settlement Administrator to the Labor and Workforce Development Agency and PAGA Employees on the same date that the Settlement Administrator mails Individual Settlement Award payments to Participating Class Members.

e. Settlement Administration Costs. The Settlement Administration fees and expenses, which are estimated not to exceed Thirteen Thousand Three Hundred Twenty-Five Dollars (\$13,325.00), shall be paid from the Maximum Settlement Amount. Prior to Plaintiff filing a Motion for Final Approval of the Settlement, the Settlement Administrator shall provide the Parties with a statement detailing the Settlement Administration Costs to date. The Parties agree to cooperate in the Settlement Administration process and to make all reasonable efforts to control and minimize Settlement Administration Costs.

i. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

ii. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities required by the Settlement. The Settlement Administrator shall be authorized to establish a Qualified Settlement Fund (“QSF”) pursuant to IRS rules and regulations in which the Maximum Settlement Amount shall be placed and from which payments required by the Settlement shall be made.

53. Payroll Taxes. In accordance with this Settlement and to the fullest extent possible, the Maximum Settlement Amount shall resolve, satisfy and completely extinguish all of Defendant’s liability with respect to the Class Members, except that Defendant shall solely be responsible for the Employer’s Share of Payroll Taxes on the portion of the Individual Settlement Awards that constitutes alleged unpaid wages. Upon the transfer of the Maximum Settlement Amount and the Employer’s Share of Payroll Taxes, Defendant shall have no further payment or defense obligation whatsoever with respect to any claims covered by this Settlement made or asserted by any person or entity in connection with the Class Members.

1 54. Final Settlement Approval Hearing and Entry of Final Order and Judgment. Following
2 expiration of the Response Deadline, a Final Approval Hearing shall be conducted by the Court for the
3 Court to determine whether to grant final approval of the Settlement, including determining the amounts
4 properly payable for the: (i) Class Counsel Award; (ii) Class Representative Service Award; (iii) PAGA
5 Payment; and (iv) Settlement Administration Costs. Prior to the Final Approval Hearing, the Settlement
6 Administrator shall provide a written report or declaration to the Parties describing the process and results
7 of the administration of the Settlement to date, which report or declaration shall be filed by Plaintiff with the
8 Court prior to the Final Approval Hearing. The Parties agree to work diligently and cooperatively to have
9 this Settlement presented to the Court for final approval. The proposed Order granting Plaintiff's Motion
10 for Final Approval shall be mutually agreed to by the Parties prior to Plaintiff submitting the proposed
11 Order to the Court. Plaintiff will also provide Defendants with the opportunity to review and comment
12 upon drafts of the notice of motion and memorandum of points and authorities to be filed in connection
13 with his Motion for Final Approval at least three (3) days prior to filing such motion with the Court.

14 55. Duties of the Parties Prior to Court Approval. The Parties shall promptly submit this
15 Settlement Agreement to the Court in support of Plaintiff's Motion for Preliminary Approval and
16 determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this
17 Settlement Agreement, the Parties shall apply to the Court for the entry of an order scheduling a fairness
18 hearing on the question of whether the proposed settlement, including payment of the Class Counsel
19 Award, Class Representative Service Award, PAGA Payment, and Settlement Administration Costs,
20 should be finally approved as fair, reasonable and adequate as to the members of the Settlement Class.

21 As part of Plaintiff's Motion for Preliminary Approval, Plaintiff shall also apply to the Court for
22 the entry of an Order as follows:

- 23 a. Certifying the Settlement Class for settlement purposes only;
- 24 b. Approving, as to form and content, the proposed Settlement Notice;
- 25 c. Approving the manner and method for Class Members to object or request
26 exclusion from the Settlement, as described herein and within the Settlement Notice;
- 27 d. Directing the mailing of the Settlement Notices to Class Members, by first class mail;
- 28 and

1 e. Preliminarily approving the Settlement subject only to the objections of Class
2 Members and final review by the Court;

3 As part of Plaintiff's Motion for Final Approval, Class Counsel will submit a proposed Final
4 Order of Approval and Judgment:

5 a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
6 adequate, and directing consummation of its terms and provisions;

7 b. Approving the Class Counsel Award, Class Representative Service Payment to
8 Plaintiff, PAGA Payment, and Settlement Administration Costs;

9 c. Setting a date when the Parties shall submit the Final Report regarding the
10 distribution of the Maximum Settlement Amount pursuant to California Code of Civil Procedure section
11 384, and, if necessary a date for a final accounting hearing following its receipt of the Final Report;

12 d. Entering judgment in this Action.

13 56. Revocation of Settlement by Defendant. If ten percent (10%) or more of the total Class
14 Members timely exclude themselves and/or if the combined Workweeks worked by Class Members who
15 timely exclude themselves amounts to ten percent (10%) or more of the total Workweeks worked by all
16 Class Members, Defendant may, at their election and in their sole discretion, rescind the Settlement and
17 all actions taken in furtherance of it will thereby be null and void. Defendant must exercise this right of
18 rescission in writing, by certified or electronic mail to Class Counsel, within thirty (30) calendar days of
19 the Response Deadline. Any Settlement Administration Costs already incurred by the Settlement
20 Administrator shall be paid by Defendant in event the Settlement is terminated under this provision. At
21 no time will Defendant or Defense counsel, or their agents or representatives, seek to solicit or otherwise
22 encourage any Class Member to opt-out of the Settlement Class.

23 57. Nullification of Settlement. In the event: (i) the Court does not enter the Preliminary
24 Approval Order; (ii) the Court does not grant final approval of the Settlement; (iii) the Court does not enter
25 the Final Order and Judgment; or (iv) the Settlement does not become final for any other reason, this
26 Stipulation of Settlement shall be rendered null and void, any order or judgment entered by the Court in
27 furtherance of this Settlement shall be treated as void from the beginning and this Stipulation of Settlement
28 and any documents related to it shall not be used by any Class Member or Class Counsel to support any

claim or request for class certification in the Action, and shall not be used in any other civil, criminal or administrative action against Defendant or any of the other Released Parties. Should the Settlement not become final for any reason, the Parties will request that the Court reopen proceedings within thirty (30) calendar days, the Parties and any monies required to be paid under this Settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Stipulation of Settlement, and the Parties shall proceed in all respects as if this Stipulation of Settlement had not been executed, except that any Settlement Administration Costs already incurred by the Settlement Administrator shall be split evenly amongst the Parties (unless Defendant elects to revoke the Settlement, as specified in Paragraph 56 above, in which case any Settlement Administration Costs already incurred by the Settlement Administrator shall be paid by Defendant). In the event an appeal is filed from the Court's Final Order and Judgment, or any other appellate review is sought, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review and the stay shall only be lifted if the end result of the appeal or other proceeding is that the terms of this settlement agreement are upheld.

58. Plaintiff's Waiver of Right to Be Excluded. Plaintiff agrees that by signing this Settlement Agreement, he will be bound by the terms herein, including the general release described in Paragraph 49(c) above. Plaintiff further agrees that, upon signing this Settlement Agreement, he will not request to be excluded from this Settlement and that any such request for exclusion by Plaintiff will be void and of no force or effect.

59. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this Settlement only; and either Party may appeal any court order that materially alters the Settlement Agreement's terms.

60. No Admission by Defendant. Defendant denies all claims alleged in this Action and denies all wrongdoing whatsoever by Defendant. Neither this Stipulation of Settlement, nor any of its terms and conditions, nor any of the negotiations connected with it, is a concession or admission, and none shall be used against Defendant as an admission or indication with respect to any claim of any fault, concession, or omission by Defendant or that class certification is proper under the standard applied to contested certification motions. The Parties stipulate and agree to the certification of the proposed Settlement Class for settlement purposes only. The Parties further agree that this Stipulation of Settlement will not be admissible

1 in this or any other proceeding as evidence that either (i) a class action should be certified or (ii) Defendant is
2 liable to Plaintiff or any Class Member, other than according to the terms of this Stipulation of Settlement.

3 61. Publicity.

4 a. Prior to the Filing of Plaintiff's Motion for Preliminary Approval. Class
5 Representative and Class Counsel will not make any public disclosures of any kind regarding the
6 Settlement, this Stipulation of Settlement, or the Confidential Memorandum of Understanding executed by
7 Class Counsel and Defense Counsel on March 18, 2021, including but not limited to postings on Class
8 Counsel's websites and postings on any social media sites/outlets. However, Class Counsel is authorized
9 to make disclosures as necessary for the purposes of obtaining preliminary approval of, and effectuating
10 the terms of, the Settlement. Such disclosures are limited to court filings, submission of the Settlement to
11 the LWDA, and communications with the Settlement Administrator for purposes of effectuating the terms
12 of the Settlement. Class Counsel will take all steps necessary to ensure the Class Representative is aware
13 of, and will encourage him to adhere to, the restriction against any public disclosures regarding the
14 Settlement, this Stipulation of Settlement, and the Confidential Memorandum of Understanding executed
15 by Class Counsel and Defense Counsel on March 18, 2021 until after the Motion for Preliminary Approval
16 is filed. Further, Class Counsel will not include, reference or use the Settlement for any marketing or
17 promotional purposes, or for attempting to influence business relationships at Defendant's locations, either
18 before or after the Motion for Preliminary Approval is filed.

19 b. Following the Court's Order Granting Preliminary Approval. Class Representative
20 and Class Counsel will not initiate any communications with the media or third parties, except for the
21 LWDA and the Settlement Administrator as necessary to effectuate the terms of the Settlement and the
22 Court's orders granting preliminary approval. If contacted by the media or third parties, other than the
23 LWDA or the Settlement Administrator, Class Representatives and Class Counsel will only discuss
24 information publicly available and on file with the Court. Class Counsel will take all steps necessary to
25 ensure the Class Representative is aware of, and will encourage him to adhere to, the restriction against
26 initiating any media comment. Class Counsel further agrees not to use the Settlement or any of its terms for
27 any marketing or promotional purposes, and, as stated above, will not include, reference or use the
28 Settlement for any marketing or promotional purposes, or for attempting to influence business relationships

1 at Defendant's locations, either before or after the Motion for Preliminary Approval is filed. However,
2 nothing herein will restrict Class Counsel from including publicly available information regarding this
3 Settlement in future judicial submissions regarding Class Counsel's qualifications and experience.

4 62. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
5 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
6 constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

7 63. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
8 Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the Judgment to
9 the Court for its approval, pursuant to Rule 3.770 of the California Rules of Court. After entry of the
10 Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (a) the
11 interpretation and enforcement of the terms of the Settlement, (b) Settlement administration matters, and
12 (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this Agreement

13 64. Exhibits and Headings. The terms of this Stipulation of Settlement include the terms set forth
14 in any attached Exhibit(s), which are incorporated by this reference as though fully set forth herein. The
15 Exhibit(s) to this Stipulation of Settlement are an integral part of the Settlement. The descriptive headings of
16 any paragraphs or sections of this Stipulation of Settlement are inserted for convenience of reference only.

17 65. Amendment or Modification. This Stipulation of Settlement may be amended or
18 modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

19 66. Entire Agreement. This Stipulation of Settlement and any attached Exhibit(s) constitute
20 the entire agreement between the Parties, and no oral or written representations, warranties, or
21 inducements have been made to Plaintiff or Defendant concerning this Stipulation of Settlement or its
22 Exhibit(s) other than the representations, warranties, and covenants contained and memorialized in this
23 Stipulation of Settlement and its Exhibit(s). No other prior or contemporaneous written or oral
24 agreements may be deemed binding on the Parties.

25 67. Authorization to Enter into Settlement Agreement. Class Counsel and Defense Counsel
26 warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this
27 Stipulation of Settlement and to take all appropriate actions required or permitted to be taken by such Parties
28 pursuant to this Stipulation of Settlement to effectuate its terms, and to execute any other documents required

1 to effectuate the terms of this Stipulation of Settlement. The Parties, Class Counsel and Defense Counsel
2 shall cooperate with each other and use their best efforts to effect the implementation of the Settlement. In
3 the event the Parties are unable to reach agreement on the form or content of any document needed to
4 implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the
5 terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. The
6 person(s) signing this Stipulation of Settlement on behalf of Defendant represents and warrants that he/she
7 is authorized to sign this Stipulation of Settlement on behalf of Defendant. Plaintiff represents and warrants
8 that he is authorized to sign this Stipulation of Settlement and that he has not assigned any claim, or part of
9 a claim, covered by this Settlement of Settlement to a third-party. The Parties have cooperated in the
10 drafting and preparation of this Stipulation of Settlement. Hence, in any construction made of this
11 Stipulation of Settlement, the same shall not be construed against any of the Parties.

12 68. Binding on Successors and Assigns. This Stipulation of Settlement shall be binding
13 upon, and inure to the benefit of, the successors and assigns of the Parties.

14 69. California Law Governs. All terms of this Stipulation of Settlement and the Exhibit(s) hereto
15 shall be governed by and interpreted according to the laws of the State of California, without giving effect to
16 any law that would cause the laws of any jurisdiction other than the State of California to be applied.

17 70. Counterparts. This Stipulation of Settlement may be executed in one or more counterparts.
18 All executed counterparts and each of them shall be deemed to be one and the same instrument.

19 71. This Settlement is Fair, Adequate and Reasonable. Plaintiff represents that this Settlement
20 is a fair, adequate, and reasonable settlement of the Action and he has arrived at this Settlement after
21 extensive arm's-length negotiations, taking into account all relevant factors, present and potential.

22 72. Jurisdiction of the Court. Following entry of the Final Order and Judgment, the Court
23 shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms
24 of this Stipulation of Settlement and all orders and judgments entered in connection therewith, and the
25 Parties, Class Counsel and Defense Counsel submit to the jurisdiction of the Court for purposes of
26 interpreting, implementing, and enforcing the Settlement embodied in this Stipulation of Settlement and
27 all orders and judgments entered in connection therewith.
28

73. Invalidity of Any Provision. Before declaring any term or provision of this Stipulation of Settlement invalid, the Parties request that the Court first attempt to construe the terms or provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Stipulation of Settlement as valid and enforceable. In the event the Court declares any material provision of this Stipulation of Settlement invalid, the Stipulation of Settlement will be void and its terms will be of no force and effect, except as otherwise agreed to by the Parties in writing.

74. Binding Nature of Notice of Class Action Settlement. It is agreed that, because the Class Members are so numerous, it is impossible or impractical to have each Class Member execute the Stipulation of Settlement. The Class Notice shall advise all Class Members of the binding nature of the Settlement, and the release of Released Claims and shall have the same force and effect as if this Stipulation of Settlement were executed by each Participating Class Member.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiff, on the one hand, and Defendant, on the other hand, as of the date(s) set forth below:

Dated: Jun 15, 2021, 2021

Santos Orellana

Santos Orellana (Jun 15, 2021 17:27 PDT)

Plaintiff SANTOS ORELLANA

Dated: _____, 2021

Defendant SMARTE CARTE, INC.

By:
Title:

///

///

///

///

///

1 73. Invalidity of Any Provision. Before declaring any term or provision of this Stipulation of
2 Settlement invalid, the Parties request that the Court first attempt to construe the terms or provisions
3 valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of
4 this Stipulation of Settlement as valid and enforceable. In the event the Court declares any material
5 provision of this Stipulation of Settlement invalid, the Stipulation of Settlement will be void and its
6 terms will be of no force and effect, except as otherwise agreed to by the Parties in writing.

7 74. Binding Nature of Notice of Class Action Settlement. It is agreed that, because the Class
8 Members are so numerous, it is impossible or impractical to have each Class Member execute the
9 Stipulation of Settlement. The Class Notice shall advise all Class Members of the binding nature of the
10 Settlement, and the release of Released Claims and shall have the same force and effect as if this
11 Stipulation of Settlement were executed by each Participating Class Member.

12
13 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint
14 Stipulation of Class Action and PAGA Settlement and Release between Plaintiff, on the one hand, and
15 Defendant, on the other hand, as of the date(s) set forth below:

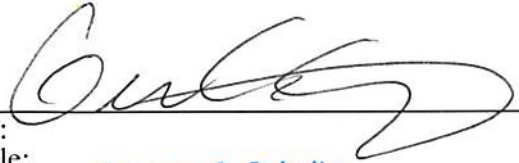
16
17
18 Dated: _____, 2021

Plaintiff SANTOS ORELLANA

19
20 Dated: June 16, 2021

Defendant SMARTE CARTE, INC.

21
22
23 By: _____
Title:


Gregory C. Schultz
General Counsel

24 ///

25 ///

26 ///

27 ///

28 ///

1 Approved as to form and content and as to Paragraph 61 (Publicity):
2

3 Dated: June 15, 2021

HAINES LAW GROUP, APC

4
5 

6 Paul K. Haines
7 Fletcher W. Schmidt
8 Matthew K. Moen

9
10 Attorneys for Plaintiff
11 SANTOS ORELLANA

12 Dated: June 16, 2021

JACKSON LEWIS P.C.

13
14 

15 Michael D. Thomas
16 Eric J. Gitig

17 Attorneys for Defendant
18 SMARTE CARTE, INC.
19
20
21
22
23
24
25
26
27
28

4831-0685-3602, v. 4

Exhibit A

*SANTOS ORELLANA, as an individual and on behalf of all others similarly situated, Plaintiff,
vs. SMARTE CARTE, INC., a Minnesota corporation; and DOES 1 through 100, Defendants*
Los Angeles County Superior Court, Case No. 20STCV08890.

NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully

To: All current and former non-exempt employees who worked for Smarte Carte, Inc. in California at any time between March 5, 2016 and [end of Class Period] (“Class Members”).

On [date of the order granting Preliminary Approval], the Honorable Yvette M. Palazuelos of the Los Angeles County Superior Court granted preliminary approval of this class action settlement and ordered the parties to notify all Class Members of the settlement. You have received this notice because Smarte Carte, Inc.’s records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at :00 .m. on , 2021 in Department 9 of the Los Angeles County Superior Court located at 312 North Spring Street, Los Angeles, CA 90012. You are not required to attend the Hearing, but you are welcome to do so at your own expense. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact the Settlement Administrator, Class Counsel or Defendant’s Counsel using the contact information at the bottom of this notice to confirm the address and time of the hearing.

Summary of the Litigation

Plaintiff Santos Orellana (“Plaintiff”) claims that Defendant Smarte Carte, Inc. (“Defendant”) violated California state labor laws by its alleged: (1) failure to pay overtime wages; (2) minimum wage violations; (3) meal period violations; (4) rest meal period violations; (5) wage statement violations; (6) failure to pay timely final wages; and (7) unfair competition. Defendant has denied and continues to deny the factual and legal allegations in the case and believes that it has consistently complied with all applicable laws. Following the exchange of relevant documents and information, and mediation with an experienced and well-respected class action neutral, the parties were able to negotiate the current settlement.

Counsel for Plaintiff, who have been appointed by the Court to represent the class, Haines Law Group, APC (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believes the claims alleged in this lawsuit have merit, Class Counsel also recognizes that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believes the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiff solely because of the risk and expense of continued litigation.

Summary of The Proposed Settlement Terms

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for a Maximum Settlement Amount of \$1,375,000. Subject to final Court approval, this amount is inclusive of: (i) individual settlement payments to all Participating Class Members; (ii) Class Counsel’s court-approved attorneys’ fees not to exceed one-third (1/3) of the Maximum Settlement Amount and costs not to exceed \$30,000.00; (iii) a court-approved Class Representative Service Award not to exceed \$5,000 to Plaintiff for his services on behalf of the Class; (iv) the

Settlement Administrator's court-approved fees and expenses currently estimated at \$13,325.00; and (v) a payment of \$50,000 in settlement of Plaintiff's claims under the California Private Attorneys General Act of 2004 (the "PAGA Settlement"). After deducting Class Counsel's attorneys' fees and costs, the Class Representative Service Award, the Settlement Administrator's fees and expenses, and the PAGA Settlement, a total of approximately \$ [REDACTED] (the "Net Settlement Amount") will be allocated to Participating Class Members who do not opt out of the settlement.

Each Class Member's individual settlement payment will be based on the number of Workweeks he/she was employed in California as a non-exempt employee for Defendant between March 5, 2016 and [end of Class Period] (the "Class Period"). Specifically, to determine each Class Member's estimated Individual Settlement Payment, the Settlement Administrator will follow the following methodology:

- (i) Ten percent of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each Participating Class Member who worked for Defendant at any time from March 5, 2019 to [end of Class Period] shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
- (ii) Ten percent of the Net Settlement Amount shall be designated as the "Waiting Time Amount." The Waiting Time Amount shall be distributed in equal, pro-rata shares to each Participating Class Member who separated their employment from Defendant at any time from March 5, 2017 to [end of Class Period].
- (iii) The Settlement Administrator will then calculate the "Workweek Value" by dividing the remainder of the Net Settlement Amount by the total number of Workweeks for the entire Settlement Class during the Class Period; and (ii) Multiply the Workweek Value by the number of Workweeks worked by each Class Member, and add it to any entitlement from the Wage Statement Amount and/or Waiting Time Amount. All Class Members will be entitled to payment for at least one Workweek.

Should any of the following occur, the Settlement Administrator will proportionately increase the estimated Individual Settlement Award of each Participating Class Member to ensure that the entire Net Settlement Amount is distributed to Participating Class Members: (i) any Class Members submit timely and valid, or otherwise accepted, Requests for Exclusion following the provision of Settlement Notices and expiration of the Response Deadline; (ii) the Court approves a Class Representative Service Award in an amount less than that requested by Plaintiff; (iii) the Court approves a Class Counsel Award in an amount less than that requested by Plaintiff; and/or (iv) the Court approves Settlement Administration Costs in an amount less than that requested by Plaintiff.

According to Defendant's records, you worked during the Class Period as a non-exempt employee in California for a total of [REDACTED] Workweeks. Accordingly, your estimated Individual Settlement Payment is approximately \$ [REDACTED].

To the extent you dispute the number of Workweeks listed above, you must make your dispute ("Workweek Dispute") in writing and send it to the Settlement Administrator via fax or mail. Your Workweek Dispute must be postmarked or faxed no later than [Response Deadline] (the "Response Deadline") to:

Settlement Administrator
c/o [REDACTED]
[REDACTED]
[REDACTED]

Your Workweek Dispute must be in writing and contain: (a) your full name, signature, address, and the last four digits of your Social Security number; (b) the number of Workweek you contend is correct; and (c) any evidence supporting your contention. Defendant's records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator will resolve and decide all Workweek Disputes, however, if the

Questions? Contact the Settlement Administrator at 1-[REDACTED]

Settlement Administrator and the parties cannot agree on a resolution, the Parties will submit the Workweek Dispute to the Court for a final determination.

The Settlement will become final on the “Effective Date.” The Effective Date of the Settlement will be 15 days after the Court has held a formal fairness hearing and entered a final Order and Judgment approving the settlement if there are no written objections to the proposed settlement, or if written objections are filed with the Court and later withdrawn or denied. If written objections are filed which are *not* later withdrawn or denied, the Effective Date of the Settlement is five (5) business days after the period for filing any appeal opposing the Court’s final Order, or five (5) business days after any appeal has been finally and conclusively dismissed.

Once the settlement becomes effective (as defined above), Defendant will have 15 days to deposit the settlement funds into a bank account. Within 15 days after Defendant deposits the funds, the Settlement Administrator will send out settlement payments to Participating Class Members. Checks will be valid for 180 days. Any checks that have not been cashed after 180 days will be voided and the funds will be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500, *et seq.*, in the name of the Class Member to whom the check was issued, so that the funds may later be claimed by the Class Member.

IRS Forms W-2 and 1099 will be distributed to Participating Class Members and the appropriate taxing authorities reflecting the payments they receive under the settlement. Specifically, for purposes of the settlement, one-third (1/3) of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued, one-third (1/3) will be allocated as non-wages for which IRS Forms 1099-MISC will be issued; and one-third (1/3) will be allocated as interest for which IRS Forms 1099-MISC will be issued.

Your Options Under the Settlement

Option 1 – *Automatically Receive a Payment from the Settlement*

If you want to receive your payment from the settlement, then no further action is required on your part. You will then automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court. In addition, you will be deemed to have released or waived the following “Released Claims” against the “Released Parties” (i.e., Defendant and all its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be liable for any of the Released Claims, and Defendant’s counsel of record in the action):

All claims under state, federal or local law, whether statutory, common law or administrative law, arising out of or related to allegations set forth in the operative Complaint, including but not limited to claims for minimum wage violations, failure to pay overtime wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, unfair competition and all other alleged violations of the California Business and Professions Code section 17200, *et seq.*, and alleged violations of PAGA, including, but not limited to, injunctive relief, punitive damages, liquidated damages, penalties of any nature, including civil penalties under PAGA, interest, fees, including fees under California Code of Civil Procedure section 1021.5; costs; and all other claims and allegations made or which could have been made in the Action based on the facts and allegations pled in the operative Complaint during the Class Period.

Option 2 – *Opt Out of the Settlement*

If you do not wish to participate in the settlement, you may exclude yourself by submitting a written request to the Settlement Administrator clearly indicating that you do not wish to be included in the settlement. The written “Request for Exclusion” must also: (i) contain your name, address, telephone number, and last four digits of your

Social Security Number; (ii) be signed and dated by you, and (iii) be returned by fax or mail to the Settlement Administrator at the below address and/or facsimile number no later than [Response Deadline].

Settlement Administrator

c/o [Redacted]
[Redacted]
[Redacted]

The date of the fax or postmark on the mailing envelope will be the exclusive means to determine whether a Request for Exclusion has been timely submitted.

If you submit a valid and timely Request for Exclusion, you will not get a settlement payment and you will not be bound by the settlement. However, to the extent you are eligible to receive a portion of the PAGA Settlement, you will still receive that amount whether or not you submit a Request for Exclusion. This is because, if the Court approves the PAGA Settlement, there is no right to be excluded from the PAGA release that is part of this Settlement. A Class Member who does not submit a timely and valid request exclusion from the settlement will be deemed a Participating Class Member and will be bound by all terms of the settlement if the settlement is granted final approval by the Court.

Option 3 – Object to the Settlement

A Participating Class Member may object to the settlement if he/she believes it is unfair or unreasonable by submitting a written objection to the Settlement Administrator. If you choose to object to the settlement, your written “Notice of Objection” must provide: (i) your full name, signature, address, telephone number, and the last four digits of your Social Security number; (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection; and (iii) copies of any papers, briefs, or other documents upon which the objection is based. Your Notice of Objection should also include a statement indicating whether you intend to appear at the Fairness Hearing. The Notice of Objection must be returned by fax or mail to the Settlement Administrator at the below address and/or facsimile number no later than [Response Deadline]:

Settlement Administrator

c/o [Redacted]
[Redacted]
[Redacted]

The date of the fax or postmark on the mailing envelope will be the exclusive means to determine whether a Notice of Objections has been timely submitted. Late objections will not be considered.

You may also, if you wish and at your own expense, appear at the Final Approval Hearing set for [Redacted]:00 .m. on [Redacted], 2021 in Department 9 of the Los Angeles County Superior Court and discuss your objection with the Court and the parties. You may also retain an attorney at your own expense to represent you at the hearing.

By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

Summary of Settlement Options

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived all of the Released Claims against the Released Parties.

Questions? Contact the Settlement Administrator at 1-[Redacted]

If you choose **Option 2**, you will no longer be a Class Member, and you will (i) be barred from participating in the settlement but will not be deemed to have released the Released Claims, (ii) be barred from filing an objection to the settlement, and (iii) not receive a payment from the settlement.

If you choose **Option 3**, you will still be a Participating Class Member. If the Court overrules your objection and approves the settlement, you will be entitled to receive your estimated Individual Settlement Payment and deemed to have released or waived all of the Released Claims against the Released Parties.

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case, which may be inspected at the Office of the Clerk for the Superior Court of California for the County of Los Angeles, 312 N. Spring St., Los Angeles, 90012. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or counsel for the parties at the addresses set forth below:

Class Counsel

HAINES LAW GROUP, APC
Paul K. Haines
Fletcher W. Schmidt
Matthew K. Moen
2155 Campus Drive, Suite 180
El Segundo, California 90245
Telephone: (424) 292-2350
Facsimile: (424) 292-2355
Email: phaines@haineslawgroup.com
fschmidt@haineslawgroup.com
mmoen@haineslawgroup.com

Defendant's Counsel

JACKSON LEWIS P.C.
Michael D. Thomas
Eric J. Gitig
725 S. Figueroa, Suite 2500
Los Angeles, CA 90017
Telephone: (213) 689-0404
Fax: (213) 689-0430
Email: Michael.Thomas@jacksonlewis.com
Eric.Gitig@jacksonlewis.com

PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH INQUIRIES.

EXHIBIT 2