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dba Smith Collision Center

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

GEORGE PADILLA, on behalf of himself
and all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*

Plaintiff,

v.

SMITH CHEVROLET CO., INC. dba
SMITH COLLISION CENTER, a
California corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: CV-20-002683

CLASS ACTION

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: June 17, 2020

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims (“Settlement Agreement”) is made and
3 entered into by and between Plaintiff George Padilla (“Padilla” or “Plaintiff” or “Class
4 Representative”), individually and on behalf of all others similarly situated, and Defendant Smith
5 Chevrolet Co., Inc. dba Smith Collision Center (“Defendant”), subject to the terms and conditions
6 herein and the Court’s approval.

7 **A. Definitions.**

8 1. Plaintiff and the Settlement Class (as defined below) and Defendant are collectively
9 referred to herein as “the Parties.”

10 2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of
11 record for Plaintiff. For purposes of this settlement only, the firm of Gaines & Gaines, APLC shall
12 be designated as “Class Counsel.”

13 3. The “Action” means the case entitled *George Padilla, Plaintiff, v. Smith Chevrolet*
14 *Co., Inc. dba Smith Collision Center, And Does 1 Through 10, Inclusive, Defendants,*” Case No.
15 CV-20-002683, pending before the Superior Court of the State of California for the County of
16 Stanislaus.

17 4. The “Settlement Class” shall be defined as “all current and former non-exempt
18 California employees of Defendant employed from June 17, 2016 through December 31, 2020”
19 (the “Class Period”). Defendant represents that this Class contains no more than 122 members who
20 worked no more than 5,500 pay periods during the Class Period.

21 5. Members of the Settlement Class shall collectively be referred to as a “Class
22 Member” or “Class Members.” Any Class Member who files a timely request for exclusion, as
23 detailed below, will be excluded from the final Settlement Class.

24 **B. General.**

25 1. On April 10, 2020, Plaintiff exhausted the pre-filing requirements of the Labor Code
26 Private Attorneys General Act of 2004 (“PAGA”).

27 2. On or about June 17, 2020, Plaintiff initiated the Action by filing a Complaint,
28 subsequently amended, pursuant to PAGA on behalf of himself and all other aggrieved employees.

1 The Second Amended Complaint, attached hereto as Exhibit 3 and which will be filed as part of
2 the settlement approval process, asserts direct class and representative action claims against
3 Defendant for (1) failure to provide rest periods or compensation in lieu thereof (Labor Code §
4 226.7; IWC Wage Order 4-2001); (2) failure to provide meal periods or compensation in lieu
5 thereof (Labor Code §§ 226.7, and 512; IWC Wage Order 4-2001); (3) knowing and intentional
6 failure to comply with itemized employee wage statement provisions (Labor Code §§ 226(a), (e),
7 (h)); (4) failure to timely pay wages due at separation of employment (Labor Code §§ 201-203);
8 (5) failure to reimburse employee business expenses (Labor Code § 2802); (6) violation of Business
9 and Professions Code § 17200; and (6) penalties pursuant to Labor Code § 2699(f) for violations
10 of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 512, 558 and 2802. (the “Second Amended
11 Complaint”).

12 3. Defendant denies any liability or wrongdoing of any kind associated with the claims
13 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
14 purpose other than this settlement. Defendant contends that it has complied at all times with the
15 California Labor Code. It is Defendant’s position that, if this case were to be litigated, class
16 certification would be inappropriate because Plaintiff is not an adequate class representative,
17 Plaintiff’s claims are not typical of putative class members, and individual issues predominate over
18 class issues. The Action, the negotiation and execution of this Settlement Agreement, and all acts
19 performed or documents executed pursuant to or in furtherance of the Settlement Agreement (i)
20 shall not be used as an admission or evidence of wrongdoing on behalf of Defendant; (ii) shall not
21 be an admission or evidence of fault on behalf of Defendant in any action before a civil, criminal,
22 or administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission
23 or evidence of the appropriateness of these or similar claims for class certification in the Action or
24 with respect to any other proceeding.

25 4. The Class Representative contends that Defendant violated the California Labor
26 Code and that this case is appropriate for class certification.

27 5. Class Counsel represent that they have conducted a thorough investigation into the
28 facts and law during the prosecution of this class action case, including the exchange of extensive

1 informal discovery and the review and verification of statistical data and other facts and information
2 provided by Defendant. Counsel for the Parties also represent that they have investigated the
3 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiffs and
4 potential defenses thereto, and the damages claimed by Plaintiff.

5 6. In January 2021, following their exchange of information regarding the Settlement
6 Class and the claims and defenses asserted by the Parties, counsel for the Parties engaged in arm's-
7 length negotiations to reach the basic terms of this Settlement.

8 7. Based on their own independent investigation and evaluation, Class Counsel are of
9 the opinion (and will so represent to the Court) that settlement for the consideration and on the
10 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
11 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
12 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
13 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
14 that this settlement is fair and in the best interest of the Settlement Class.

15 8. The Parties agree that the settlement class described herein may be certified for
16 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
17 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
18 approved, the certification will have no force or effect and will immediately be revoked. The
19 Parties further agree that certification for purposes of the settlement is in no way an admission that
20 class certification is proper under the more stringent standard applied for litigation and that
21 evidence of this limited stipulation for settlement purposes only will not be admissible for any
22 purpose in this or any other proceeding.

23 **C. Terms of Settlement.**

24 1. The financial terms of the settlement are as follows:

25 (a) **Maximum Settlement Amount:** The Parties agree to settle this Action for
26 a Maximum Settlement Amount of Two Hundred Thousand U.S. Dollars (\$200,000.00) ("the
27 Maximum Settlement Amount"). The Maximum Settlement Amount includes the attorneys' fees
28 of Class Counsel, litigation costs and expenses (which includes, without limitation, all such fees

1 and costs incurred to date, as well as such fees and costs to be incurred in documenting the
2 settlement, providing any notices required as part of the settlement, securing Court approval of the
3 settlement, and obtaining judgment in the Action), the service payment to the Class Representative,
4 as approved by the Court, the payment to the LWDA pursuant to the PAGA claims in the Action,
5 and all costs of administration, including, without limitation, settlement administration fees and
6 expenses. Defendant shall pay all employer payroll tax obligations due on wage payments made
7 from the Net Settlement Proceeds in addition to, and separate and apart from, the Maximum
8 Settlement Amount.

9 (b) **Net Settlement Proceeds:** “Net Settlement Proceeds” is defined as the
10 Maximum Settlement Amount less the amounts approved and awarded by the Court for: attorneys’
11 fees and documented litigation costs and expenses incurred or advanced by Class Counsel, the
12 service payment to the Class Representative, the payment to the LWDA pursuant to PAGA, and
13 the costs of administering the settlement.

14 (c) **Calculation of the Individual Payment Amounts:** “Individual Payment
15 Amount” means the portion of the Net Settlement Proceeds distributable to each Class Member
16 who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).
17 The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by
18 the total weeks worked by all participating Class Members in California in a non-exempt position
19 during the Class Period, which will yield the applicable weekly rate. The weekly rate shall be
20 multiplied by the number of weeks each individual participating Class Member worked for
21 Defendant in California in a non-exempt position during the Class Period to yield their Individual
22 Payment Amount. Each Participating Settlement Class Member who does not opt out will receive
23 an Individual Payment Amount equal to their individual weeks worked in California in a non-
24 exempt position during the Class Period multiplied by the Workweek Value.

25 i. For tax purposes, each Individual Payment Amount will be
26 apportioned (a) 25% as premium pay for missed meal and rest periods (reported on an IRS Form
27 W-2 and subject to applicable withholdings); and (b) 75% as penalties and interest (reported on an
28 IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members will be

1 subject to any applicable wage garnishments, liens, or other legally mandated treatment as required
2 by law.

3 (d) **PAGA Payments:** The Parties agree that Five Thousand Dollars
4 (\$5,000.00) shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this
5 amount, Seventy-Five Percent (75%), or Three Thousand Seven Hundred Fifty Dollars (\$3,750.00)
6 shall be paid to the LWDA, and Twenty-Five Percent (25%), or One Thousand Two Hundred Fifty
7 Dollars (\$1,250.00) shall be paid to Class Members who have not submitted a valid and timely
8 Request for Exclusion Form as part of the Net Settlement Proceeds.

9 (e) **Service Payment to Class Representative:** The amount awarded to the
10 Class Representative as a service payment will be set by the Court in its discretion, not to exceed
11 Five Thousand Dollars (\$5,000.00). This amount will be deducted from the Maximum Settlement
12 Amount. An IRS Form 1099 will be issued to the Class Representative for his service payment.
13 Defendant agrees not to dispute or otherwise object to the service payment if Plaintiff requests
14 \$5,000 or less.

15 (f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
16 deducted from the Maximum Settlement Amount in an amount to be set by the Court taking into
17 account the settlement award that has been made available for the Settlement Class by the efforts
18 of Class Counsel. The amount awarded shall not exceed Eighty Thousand Dollars (\$80,000.00)
19 (i.e., 40% of the Maximum Settlement Amount). An IRS Form 1099 will be issued to Class
20 Counsel with respect to its award of attorneys' fees. Defendant agrees not to dispute or otherwise
21 object to the attorneys' fee award requested by Class Counsel so long as the request does not exceed
22 \$80,000.

23 (g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
24 the Maximum Settlement Amount in an amount to be set by the Court for documented out-of-
25 pocket litigation costs and expenses, not to exceed Three Thousand Dollars (\$3,000.00). An IRS
26 Form 1099 will be issued to Class Counsel with respect to its award of costs and expenses.
27 Defendant agrees not to dispute or otherwise object to the attorneys' cost award requested by Class
28 Counsel so long as the request does not exceed \$3,000.

1 (h) **Settlement Administration Costs:** The fees and other charges of the
2 Settlement Administrator to administer the Settlement are expected to total no more than Five
3 Thousand Dollars (\$5,000.00), and will be paid from the Maximum Settlement Amount. These
4 fees shall include any costs associated with the required tax reporting on any Individual Payment
5 Amounts, and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court, the
6 Parties have agreed that Phoenix Settlement Administrators will serve as a neutral third-party
7 claims' administrator ("Settlement Administrator") to perform all acts related to providing notice
8 to the Settlement Class. Settlement Administrator shall be responsible for (a) printing and
9 distributing the Court-approved Notice of Class Action Settlement ("Class Notice") to all Class
10 Members; (b) administering the settlement; (c) processing exclusions and objections; (d) resolving
11 disputes; (e) distributing the Maximum Settlement Amount as directed by the Court and set forth
12 herein; (f) tax reporting; (g) providing necessary weekly status reports; and (h) other duties and
13 responsibilities set forth herein.

14 (i) **No Warranty by Defendant:** Plaintiff understands and agrees that
15 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant
16 makes no representations regarding tax obligations or consequences, if any, related to this
17 Settlement Agreement.

18 **D. Release of Claims.**

19 1. Upon the Effective Date, Plaintiff and all Settlement Class members who do not
20 timely opt-out will be deemed to have fully released and discharged Defendant, and any of its
21 related companies, assigns, current and former employees, insurers and attorneys ("Released
22 Parties") from any and all Released Claims which arose during their employment in a non-exempt
23 position in California during the Class Period. "Released Claims" are all claims asserted in the
24 Action or any other claims that could have been asserted in the Action based on the facts alleged,
25 including but not limited to premium pay for missed meal periods, premium pay for missed rest
26 periods, waiting time penalties, wage statement violations, unreimbursed business expenses, unfair
27
28

1 business practice claims premised on the above claims, and PAGA claims premised on the above
2 claims.

3
4 **E. Notice and Exclusion Process.**

5 1. Within ten (10) calendar days after entry of the order granting preliminary approval
6 of this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class
7 Members, including their last known addresses, telephone numbers, social security numbers, and
8 their dates of employment in a non-exempt position in California during the Class Period
9 (“Settlement Class Information”). The names, addresses, telephone numbers, and Social Security
10 numbers will only be disclosed to the Settlement Administrator and not to Plaintiff’s Counsel. All
11 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
12 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the
13 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
14 storage, custody, use, and/or dissemination of the confidential information. Such information must
15 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

16 2. A notice of pendency of class action, proposed settlement and hearing date for Court
17 approval (“Class Notice”) in the form attached hereto as Exhibit 1, and as approved by the Court,
18 shall be sent by the Settlement Administrator to the Class Members, by first class mail, within
19 fourteen (14) calendar days after entry of the order granting preliminary approval. Attached to the
20 Class Notice will be a request for exclusion form (“Request for Exclusion Form”) in the form
21 attached hereto as Exhibit 2.

22 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
23 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
24 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the
25 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the
26 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
27 notices.
28

1 4. Each Class Member will be fully advised of the settlement, the ability to object to
2 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
3 inform the Class Members of the Court-established deadlines for filing objections and a Request
4 for Exclusion Form.

5 5. Each Class Notice will contain personalized information setting forth the number of
6 weeks each Class Member worked for Defendant in California in a non-exempt position during the
7 Class Period and their estimated Individual Payment Amount. To the extent a Class Member
8 disputes any of the information listed on his or her Class Notice, the Class Member may produce
9 evidence to the Settlement Administrator showing such information the Class Member contends
10 should be reflected in the Class Notice. Defendant's records will be presumed determinative,
11 however, and the Settlement Administrator's decision on these matters will be final. The Class
12 Notice will also set forth IRS W-9 information if required.

13 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
14 to receive an Individual Payment Amount, which shall be mailed to them if and when the Effective
15 Date occurs.

16 7. In order to elect not to participate in the Settlement, a Class Member must submit a
17 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five
18 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to
19 Class Members, unless the Court requires a longer period, in which case the Court ordered
20 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The
21 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the
22 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the
23 next day on which the U.S. Postal Service is open.

24 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days
25 for those Class Members whose Class Notice and Exclusion Form are returned as "undeliverable."
26 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
27 on which the U.S. Postal Service is open.
28

1 9. The Settlement Administrator will search for additional addresses on returned mail
2 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days
3 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
4 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
5 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
6 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
7 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
8 Settlement Administrator will search using the social security number for a more current address.
9 If no address is found within 10 days, no further action is required.

10 10. The Settlement Administrator will notify the Parties of the total number of valid
11 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
12 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
13 and Request for Exclusion Forms to Class Members).

14 11. In order to object to the settlement, a Class Member must mail his or her objection
15 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
16 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
17 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
18 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
19 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
20 extended for any reason.

21 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
22 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration
23 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
24 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve
25 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
26 listing the amount of all payments to be made to each Class Member without names or personal
27 identifying information.
28

13. Defendant shall deposit the Maximum Settlement Amount with the Settlement Administrator no later than ten (10) calendar days after the Effective Date, and has the right to do so sooner, but the Parties agree no funds shall be disbursed unless and until the Effective Date first occurs. The effective date of this Settlement Agreement (“Effective Date”) is the date the Court signs an order granting final approval of the settlement and entering judgment thereon. If objections to the settlement are filed, the Effective Date of the settlement is the sixty-fifth (65th) day after notice of the final approval order is mailed, unless an appeal is filed, in which case the Effective Date is the day after (a) the settlement is upheld by the Court of Appeals, or (b) all appeals are dismissed.

14. The Settlement Administrator shall disburse the Maximum Settlement Amount within fifteen (15) calendar days after its receipt thereof. Class Members must cash each of their Individual Payment Amount checks within one hundred eighty (180) calendar days after they are mailed by the Settlement Administrator. The value of any checks uncashed more than one hundred eighty (180) days after mailing shall be paid to the State of California State Controller’s Office, to be held in the name of the respective Class Member.

F. Duties of the Parties Prior to Court Approval.

1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the Court for preliminary approval of this settlement and entry of an order accomplishing the following:

- (a) scheduling a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable and adequate as to the Class Members;
- (b) approving as to form and content the proposed Class Notice;
- (c) approving as to form and content the proposed Request for Exclusion Form;
- (d) preliminarily certifying the Settlement Class for purposes of settlement;
- (e) preliminarily approving the PAGA payment of \$3,750 to the LWDA;
- (f) preliminarily setting attorneys’ fees and costs payable to Class Counsel;
- (g) preliminarily setting the service payment to the Class Representative;

1 (h) preliminarily approving Phoenix Settlement Administrators as the
2 Settlement Administrator and its estimated fees and costs of \$5,000.

3 (i) Permitting Plaintiff to file the Second Amended Complaint.

4 The Parties shall submit this Settlement Agreement to the Court and the LWDA in support
5 of Plaintiff's unopposed motion for preliminary approval of the settlement.

6 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

7 1. In connection with the hearing on final approval of the settlement provided for in
8 this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10)
9 calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered
10 by the Court):

11 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
12 and adequate, and directing consummation of its terms and provisions;

13 (b) approving Class Counsel's application for an award of attorneys' fees and
14 reimbursement of documented litigation costs and expenses, the service payment to the Class
15 Representative, the payment to the LWDA, and the costs of administering the settlement; and

16 (c) Entering judgment in this Action in accordance with this Stipulation,
17 pursuant to Cal. Rules of Court, Rule 3.769(h).

18 2. Class Counsel shall file an application for attorneys' fees and reimbursement of
19 costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing
20 on final approval (unless otherwise ordered by the Court).

21 **H. Miscellaneous Provisions:**

22 1. **Voiding the Agreement.**

23 A failure of the Court to approve any material condition of this Settlement Agreement which
24 effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or
25 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable
26 and unenforceable as to all Parties herein at the option of any Party.

27 2. **Parties' Authority.**

1 The signatories hereto represent that they are fully authorized to enter into this Settlement
2 Agreement and bind the Parties hereto to the terms and conditions hereof.

3 **3. Mutual Full Cooperation.**

4 The Parties agree to fully cooperate with each other to accomplish the terms of this
5 Stipulation of Settlement, including but not limited to, execution of such documents and such other
6 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
7 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated
8 by this Settlement Agreement and any other efforts that may become necessary by order of the
9 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
10 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the
11 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
12 Court's preliminary and final approval of the settlement.

13 **4. No Prior Assignments.**

14 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
15 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
16 entity any portion of any liability, claim, demand, action, cause of action or rights released and
17 discharged by this Stipulation of Settlement.

18 **5. No Admission.**

19 Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
20 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
21 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
22 Settlement Agreement with the intention of avoiding further disputes and litigation with the
23 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
24 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
25 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
26 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

27 **6. Notices.**

28 Unless otherwise specifically provided herein, all notices, demands or other

communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To Plaintiff and the Settlement Class:

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
GAINES & GAINES, APLC
27200 Agoura Road, Suite 101
Calabasas, CA 91301

To Defendant:

John P. Boggs, Esq.
David J. Reese, Esq.
Kevin Holloway, Esq.
FINE, BOGGS & PERKINS LLP
111 West Ocean Blvd., Suite 2400
Long Beach, California 90802

7. Construction.

The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement Agreement.

8. Captions and Interpretations.

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

9. Modification.

This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by each of the Parties hereto on their attorneys.

10. Integration Clause.

1 This Settlement Agreement contains the entire agreement between the Parties relating to
2 the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,
3 understandings, representations, and statements, whether oral or written and whether by a Party or
4 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
5 writing.

6 **11. Binding on Assigns.**

7 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
8 hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

9 **12. Governing Law.**

10 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
11 according to the laws of the State of California, without giving effect to any conflict of law
12 principles or choice of law principles.

13 **13. Signatures of All Class Members Unnecessary to be Binding.**

14 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
15 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
16 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
17 provided herein and such shall have the same force and effect as if this Settlement Agreement was
18 executed by each Class Member.

19 **14. Counterparts.**

20 This Settlement Agreement may be executed in counterparts, and when each Party has
21 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
22 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
23 Agreement, which shall be binding upon and effective as to all Parties.

24 **15. Confidentiality**

25 Until Plaintiff files his motion for preliminary approval of the class action settlement, the
26 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the
27 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing
28 agencies, or as otherwise required by law.

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1 **16. No Publicity**

2 Plaintiff and his Counsel will not contact the media about the settlement or respond to any
3 inquiries by the media regarding the Settlement, other than to state that the matter was amicably
4 settled, and the Court did not find Defendant liable. Plaintiff and her Counsel also will not post any
5 information about the settlement on social media or their firms' websites.

6 **17. Representation Regarding Class Size.**

7 Defendant represents that the Settlement Class contains no more than 122 members who
8 worked no more than 5,500 pay periods during the Class Period. If the final class size or pay
9 periods exceed these amounts, Plaintiff may terminate this Agreement.
10

11
12 Dated: January 19, 2021
 January _____, 2021

By:

DocuSigned by:

George Padilla

GEORGE PADILLA

Plaintiff and Class Representative

15
16 Dated: January 26, 2021

SMITH CHEVROLET CO., INC. dba SMITH
COLLISION CENTER

By:

Its: *Lawrence Smith, President*

17
18
19
20 **APPROVED AS TO FORM AND CONTENT:**

21 Dated: January 19, 2021

GAINES & GAINES, APLC

By:

Daniel F. Gaines

Daniel F. Gaines, Esq.

Alex P. Katofsky, Esq.

Counsel for Plaintiff and Class
Representative

24
25
26 Dated: January 27, 2021

FINE, BOGGS & PERKINS LLP

By:

- 16 -

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

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John P. Boggs, Esq.
David J. Reese, Esq.
Kevin Holloway, Esq.
Counsel for Defendant

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

GEORGE PADILLA, on behalf of himself and
all “aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*

Plaintiff,

v.

SMITH CHEVROLET CO., INC. dba SMITH
COLLISION CENTER, a California
corporation, and DOES 1 through 10, inclusive,

Defendants.

CASE NO:20-CV-002683

Assigned to the Hon. Sonny S. Sandhu, Dept. 24

**NOTICE OF PENDENCY OF CLASS
ACTION SETTLEMENT AND FINAL
HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$200,000 to pay claims to all current and former non-exempt California employees of Defendant Smith Chevrolet Co., Inc. dba Smith Collision Center (“Defendant”) employed from June 17, 2016 through December 31, 2020.
- The settlement resolves a lawsuit over whether Defendant failed to provide meal and rest periods or compensation in lieu thereof; timely issued wages upon separation of employment; issued accurate and complete wage statements; and failed to reimburse employee business expenses. It avoids costs and risks to you from continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$80,000 as attorneys’ fees and \$3,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and the Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If you move, you must notify the Settlement Administrator of your new address.
Exclude Yourself	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Smith Chevrolet about the legal claims that were brought in this case.
Object	Write to the Court about why you don't like the settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On June 17, 2020, Plaintiff George Padilla filed this lawsuit in the Stanislaus County Superior Court. The lawsuit, as amended, alleges violations of the California Labor Code. The Lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant employed from June 17, 2016 through December 31, 2020 ("Class Period"). The lawsuit alleges that members of the Class were not provided all meal and rest periods or compensation in lieu thereof; were not timely issued wages upon separation of employment; were not issued accurate and complete wage statements; and were not reimbursed for all business expenses they incurred. It seeks recovery of wages, damages, interest, statutory and civil penalties, attorneys' fees and costs. Defendant denies all of the material allegations in the Lawsuit.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.
 Alex P. Katofsky, Esq.
 Gaines & Gaines, APLC
 27200 Agoura Road, Suite 101
 Calabasas, CA 91301
 Phone: (866) 550-0855

Defendant's Attorneys

John P. Boggs, Esq.
 David J. Reese, Esq.
 Kevin Holloway, Esq.
 FINE, BOGGS & PERKINS LLP
 111 West. Ocean Blvd., Suite 2400
 Long Beach, CA 90802

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes he would have prevailed on his claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they all avoid the costs, risks, and uncertainty of a trial, and the people affected will get compensation. Plaintiff and Plaintiff's Attorneys think the settlement is fair, reasonable and adequate and in the best interests of all Class members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all current and former non-exempt California employees of Defendant employed from June 17, 2016 through December 31, 2020.

C. What does the Settlement provide?

1. Maximum Settlement Amount.

Defendant will pay \$200,000 (the "Maximum Settlement Amount") to settle the lawsuit. The following sums will be paid from the Maximum Settlement Amount: (1) \$3,750 to the California Labor and Workforce Development Agency; (2) Class Counsel's attorneys' fees in an amount set by the Court not to exceed \$80,000 and Class Counsel's documented litigation costs in an amount set by the Court not to exceed \$3,000; (3) a service payment to the Class Representative set by the court, not to exceed \$5,000, for his service in the Action; and (4) a reasonable amount set by the Court to the settlement administrator for administering the settlement, not to exceed \$5,000. The amount of the Maximum Settlement Amount remaining after these payments is the "Net Settlement Proceeds."

2. Individual Payment Amount.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the Effective Date, Plaintiff and all Settlement Class members who do not timely opt-out will be deemed to have fully released and discharged Defendant, and any of its related companies, assigns, current and former employees, insurers and attorneys ("Released Parties") from any and all Released Claims which arose during their employment in a non-exempt position in California during the Class Period.

"Released Claims" are all claims asserted in the Action or any other claims that could have been asserted in the Action based on the facts alleged, including but not limited to premium pay for missed meal periods, premium pay for missed rest periods, waiting time penalties, wage statement violations, unreimbursed business expenses, unfair business practice claims premised on the above claims, and PAGA claims premised on the above claims.

E. How Is My Share Of The Settlement Calculated?

Each participating claimant (those who do not opt out of the Settlement) shall receive an "Individual Payment Amount," which is a portion of the Net Settlement Proceeds distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).

The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by the total weeks worked by all participating Class Members in California in a non-exempt position during the Class Period, which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each individual participating Class Member worked for Defendant in California in a non-exempt position during the Class Period to yield their Individual Payment Amount. Each Participating Settlement Class Member who does not opt out will receive an Individual Payment Amount equal to their individual weeks worked in California in a non-exempt position during the Class Period multiplied by the Workweek Value.

For tax purposes, each Individual Payment Amount will be apportioned (a) 25% as premium pay for missed meal and rest periods (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 75% as penalties and interest (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [_____] weeks while employed in a non-exempt position in California from June 17, 2016 through December 31, 2020. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[_____]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than _____, 2021. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the “Final Settlement Hearing”) on _____, 2021, at _____, in the Courtroom of Judge Sandhu of the Stanislaus County Superior Court, located at [Courtroom address]. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys’ fees and costs to be awarded to Plaintiff’s Attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no

later than [45 days after mailing]. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. If you object in writing, you may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Objections must be postmarked no later than _____ [45 days after mailing].

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than _____ [45 days after mailing].

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Settlement Agreement and Release of Claims” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Stanislaus County Superior Court, located at [Court address].

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number] or Smith Chevrolet Class Action Settlement.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *George Padilla, Plaintiff, v. Smith Chevrolet Co., Inc dba Smith Collision Center, And Does 1 Through 10, Inclusive, Defendants, Stanislaus County Superior Court, Case No. CV-20-002683.* **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I was employed by Defendant Smith Chevrolet Co., Inc dba Smith Collision Center as a non-exempt employee in California during the period from June 17, 2016 through December 31, 2020.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

Last four digits of Social Security Number: XXX-XX-_____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[45 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

Smith Chevrolet Claims Administrator
c/o Phoenix Settlement Administrators

EXHIBIT 3

DANIEL F. GAINES, ESQ. SBN 251488
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Facsimile: (818) 703-8984

Attorneys for Plaintiff George Padilla, on behalf of himself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

GEORGE PADILLA, on behalf of himself and
all “aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

SMITH CHEVROLET CO., INC. dba SMITH
COLLISION CENTER, a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: CV-20-002683

*Assigned to the Hon. Sonny S. Sandhu, Dept.
24*

CLASS ACTION

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE §§ 226.7 AND 558; IWC WAGE ORDER 4-2001)**
- 2. FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE §§ 226.7, 512 AND 558; IWC WAGE ORDER 4-2001)**
- 3. KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226(a), (e))**
- 4. FAILURE TO PAY WAGES DUE AT SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)**
- 5. FAILURE TO REIMBURSE EXPENSES (LABOR CODE § 2802)**
- 6. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**

7. PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 226(a), 226.7, 512, AND 2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558

DEMAND FOR JURY TRIAL

Complaint Filed: June 17, 2020

Plaintiff GEORGE PADILLA (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class” or “Plaintiff Class”), and on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of Defendants, and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all other non-exempt employees who work or formerly worked for SMITH CHEVROLET CO., INC., a California corporation, d/b/a SMITH COLLISION CENTER, and any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”) within the State of California.

2. From June 17, 2016 through December 31, 2020, Defendants have had a consistent policy of failing to provide legally compliant meal and rest periods or compensation in lieu thereof to Class Members (as defined below); failing to pay all expense reimbursement due; failing to provide accurately itemized wage statements to Class Members; and failing to timely pay wages upon separation of employment to Class Members.

3. Plaintiff, on behalf of himself and members of the Class, brings this action pursuant to Labor Code §§ 201-203, 226(a), 226.3, 226.7, 512, 558, and 2802 seeking compensation for all unpaid premium meal and rest period wages, unpaid expense reimbursement, statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

6 6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395
7 because Defendants employed Plaintiff and Class Members in Stanislaus County, California.

PARTIES

11 7. Plaintiff GEORGE PADILLA was employed by Defendants from 2015 through
12 November 2019 as a non-exempt employee in Stanislaus County, California.

14	a.	Willfully denied rest periods or compensation in lieu thereof;
15	b.	Willfully denied meal periods or compensation in lieu thereof;
16	c.	Willfully denied the payment of all expense reimbursement due;
17	d.	Willfully denied accurately itemized wage statements; and
18	e.	Denied the timely payment of wages upon separation of his employment.

20 9. Defendant SMITH CHEVROLET CO, INC. is a California corporation doing business
21 as SMITH COLLISION CENTER. Defendant SMITH CHEVROLET CO, INC. employed Plaintiff
22 and Class Members throughout the State of California, including Stanislaus County, California.

23 10. The true names and capacities, whether individual, corporate, associate, or otherwise,
24 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
25 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
26 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
27 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will

1 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
2 designated hereinafter as DOES when such identities become known.

3 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
4 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
5 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
6 attributable to the other Defendants.

7 12. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
8 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
9 provisions of the California Labor Code as alleged herein.

10 III.

11 CLASS ACTION ALLEGATIONS

12 13. Plaintiff brings this action on behalf of himself and all others similarly situated as a
13 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the
14 following class composed of and defined as follows:

15 THE CLASS

16 All current and former non-exempt California employees of
17 Defendants employed from June 17, 2016 through December 31, 2020.

18 14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
19 modify this class description with greater specificity or further division into subclasses or limitation
20 to particular issues.

21 15. This action has been brought and may properly be maintained as a class action under
22 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
23 interest in the litigation and the proposed Class is easily ascertainable.

24 A. Numerosity

25 16. The potential members of the Class as defined are so numerous that joinder of all the
26 members the Class is impracticable. While the precise number of members of the Class has not been
27 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants
28

1 currently employ, and during the relevant time periods employed, over 75 persons in the State of
2 California who fall within the Class definition.

3 17. Accounting for employee turnover during the relevant period necessarily increases this
4 number. Plaintiff alleges Defendants' employment records would provide information as to the
5 number and location of members of the Class. Joinder of members of the Class is not practicable.

6 **B. Commonality**

7 18. There are questions of law and fact common to the Class that predominate over any
8 questions affecting only individual Class Members. These common questions of law and fact include,
9 without limitation:

- 10 a. Whether Defendants failed to properly provide rest periods or compensation in
11 lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§
12 226.7 and 558 and IWC Wage Order 4-2001;
- 13 b. Whether Defendants failed to properly provide meal periods or compensation
14 in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§
15 226.7, 512, and 5558 and IWC Wage Order 4-2001;
- 16 c. Whether Defendants failed to provide Plaintiff and members of the Class with
17 accurately itemized wage statements, in accordance with Labor Code § 226(a)
18 and (e);
- 19 d. Whether Defendants failed to reimburse Plaintiff and Class Members for
20 necessary business expenses incurred in direct consequence of the discharge
21 of their duties, in violation of Labor Code § 2802;
- 22 e. Whether Defendants failed to timely pay Plaintiff and members of the Class
23 all wages due and owing at the separation of their employment, in violation of
24 Labor Code §§ 201-203; and
- 25 f. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
26 to Business & Professions Code § 17200 *et seq.*

27 ///

28 ///

1 **C. Typicality**

2 19. The claims of the named Plaintiff are typical of the claims of members of the Class.
3 Plaintiff and members of the Class sustained injuries and damages arising out of and caused by
4 Defendants' common course of conduct in violation of laws, regulations that have the force and effect
5 of law, and statutes as alleged herein.

6 **D. Adequacy of Representation**

7 20. Plaintiff will fairly and adequately represent and protect the interests of members of
8 the Class. Counsel who represents Plaintiff are competent and experienced in litigating large
9 employment class actions.

10 **E. Superiority of Class Action**

11 21. A class action is superior to other available means for the fair and efficient adjudication
12 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and
13 questions of law and fact common to the proposed Class predominate over any questions affecting
14 only individual members of the proposed Class. Each member of the proposed Class has been
15 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

16 22. Class action treatment will allow those similarly situated persons to litigate their
17 claims in the manner that is most efficient and economical for the parties and the judicial system.
18 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
19 action that would preclude its maintenance as a class action.

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1 IV.

2 CAUSES OF ACTION

3 FIRST CAUSE OF ACTION

4 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

5 FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

6 (LABOR CODE §§ 226.7 AND 558 AND IWC WAGE ORDER 4-2001)

7 23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set
8 forth herein.

9 24. Plaintiff and Class Members are entitled to one hour of pay for each day that
10 Defendants failed to properly provide one or more rest periods as set forth in Labor Code §§ 226.7
11 and 558 and IWC Wage Order 4-2001.

12 25. Defendants failed to pay premium wages to Plaintiff and Class Members who were
13 denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC Wage Order 4-2001.
14 Plaintiff and Class Members were routinely not authorized and unable to take an off-duty, 10-minute
15 rest period for every four (4) hours of work or major fraction thereof, but were not paid premium
16 wages of one hour's pay for each missed rest period. When they were able to take a rest period, they
17 were oftentimes late, cut short or on-duty, in violation of Labor Code §§ 226.7, 558 and IWC Wage
18 Order No. 4-2001

19 26. Pursuant to Labor Code §§ 226.7 and 558 and IWC Wage Order 4-2001, Plaintiff
20 seeks the payment of all rest period compensation which he and Class Members are owed for four
21 years preceding the filing of this Action, according to proof.

22 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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28 \\\

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE §§ 226.7, 512 AND 558 AND IWC WAGE ORDER 4-2001)

27. Plaintiff incorporates paragraphs 1 through 26 of this Complaint as though fully set forth herein.

28. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7, 512, 558 and IWC Wage Order 4-2001.

29. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 4-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, and a second meal period when they worked shifts greater than ten hours, but were not paid premium wages of one hour's pay for each missed meal period. When they were able to take a meal period, they were cut short, late, or on-duty, in violation of Labor Code §§ 226.7, 512 and 558 and IWC Wage Order 4-2001.

30. Pursuant to Labor Code §§ 226.7, 512 and 558 and IWC Wage Order 4-2001, Plaintiff seeks the payment of all meal period compensation which he and Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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VI.**THIRD CAUSE OF ACTION****PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS****KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED****EMPLOYEE WAGE STATEMENT PROVISIONS****(LABOR CODE § 226(a), (e))**

31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully set forth herein.

32. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

33. Defendants failed to issue Plaintiff and Class Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class Members were not paid all wages due, including premium wages for unauthorized meal and rest periods, as stated above. As such, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by

1 the employee, in violation of Labor Code § 226(a)(9). Separately, the wage statements fail to list the
2 overtime rate, in violation of Labor Code § 226(a)(9).

3 34. As a consequence of Defendants' willful conduct in failing to provide Class Members
4 with accurate itemized wage statements, Plaintiff and members of the Class have been injured because
5 they have not been paid all wages due and were issued wage statements which do not reflect, and fail
6 to state, all information required by Labor Code § 226(a). The missing information cannot be
7 discerned at all from the face of the wage statements themselves. As a result, Plaintiff and members
8 of the Class are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all
9 actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee
10 for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per
11 employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code
12 § 226(h).

13 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

14 **VII.**

15 **FOURTH CAUSE OF ACTION**

16 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

17 **FAILURE TO TIMELY PAY WAGES DUE AT**

18 **SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)**

19 35. Plaintiff incorporates paragraphs 1 through 34 of this Complaint as though fully set
20 forth herein.

21 36. California Labor Code § 201 and § 202 require Defendants to pay employees all wages
22 due within 72 hours after resignation of employment or the day of termination of employment. Labor
23 Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,
24 as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full
25 or an action is commenced. The penalty cannot exceed 30 days of wages.

26 37. Defendants paid Plaintiff and certain members of the Class their final wages beyond
27 the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff
28 and members of Class were not paid all wages due and owing throughout the course of their

1 employment, including all premium wages for missed and denied meal and rest periods, as detailed
2 above. Consequently, at the time of their separation from employment with Defendants, they were
3 not paid all final wages due and owing for the entirety of their employment.

4 38. More than 30 days have passed since Plaintiff and certain Class Members have left
5 Defendants' employ.

6 39. As a consequence of Defendants' willful conduct in not paying wages owed timely
7 upon separation of employment, Plaintiff and certain members of the Class are entitled to up to 30
8 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages
9 at separation of employment.

10 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO REIMBURSE EXPENSES (LABOR CODE § 2802)

15 40. Plaintiff incorporates paragraphs 1 through 39 of this Complaint as though fully set
16 forth herein.

17 41. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse
18 Plaintiff and Class Members for all out-of-pocket expenses incurred by them in the performance of
19 their job duties.

20 42. Plaintiff and Class Members were required to use their personal cellular phones and
21 pay for tools to perform their work tasks for Defendants, but were not fully reimbursed by Defendants
22 for these expenses.

23 43. As a proximate result of the aforementioned violations, Plaintiff and members of the
24 Class have been damaged in an amount according to proof at the time of trial.

25 44. Pursuant to Labor Code § 2802, Plaintiff and members of the Class are entitled to
26 recover from Defendants the full amount of the expenses they incurred in the performance of their
27 job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

28 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

IX.

SIXTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

45. Plaintiff incorporates paragraphs 1 through 44 of this Complaint as though fully set forth herein.

46. This is a Class Action for Unfair Business Practices. Plaintiff, on his own behalf and on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and members of the Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

47. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

48. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

49. Wage and hour laws express fundamental public policies. Properly providing employees with all wages and expense reimbursement due are fundamental public policies of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and its employees from competitors who lower their costs by failing to comply with minimum labor standards.

50. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair

1 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
2 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
3 guaranteed to all employees under law.

4 51. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
5 §17200 *et seq.* of the Business & Professions Code.

6 52. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
7 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
8 17200 *et seq.* of the Business & Professions Code.

9 53. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
10 similarly situated have been damaged in a sum as may be proven.

11 54. Unless restrained by this Court, Defendants will continue to engage in the unlawful
12 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
13 should make such orders or judgments, including the appointment of a receiver, as may be necessary
14 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
15 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
16 to, disgorgement of profits which may be necessary to restore Plaintiff and members of the Class to
17 the money Defendants have unlawfully failed to pay.

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X.

SEVENTH CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201-202, 226(a), 226.7, 512, AND 2802 AND PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

55. Plaintiff incorporates paragraphs 1 through 54 of this Complaint as though fully set forth herein.

56. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

57. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 512, 2802; and
- b. Pursuant to Labor Code § 2699(f), the civil penalties as authorized by Labor Code §§ 226.3 and 558, excluding the recovery of any and all underpaid or unpaid wages. (ZB, N.A. v. Superior Court of San Diego County (Lawson) (2019) 8 Cal.5th 175 [“We agree with the Court of Appeal that section 558 has no private right of action. Nor can employees recover unpaid wages described in section 558 in a PAGA claim”].)

58. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

59. On April 10, 2020, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)

1 calendar days of April 10, 2020. Plaintiff may therefore commence this action to seek civil penalties
2 pursuant to Labor Code § 2698 *et seq.*

3 Wherefore, Plaintiff and the aggrieved employees he seeks to represent request relief as
4 described below.

5 **XI.**

6 **RELIEF REQUESTED**

7 WHEREFORE, Plaintiff prays for the following relief:

8 1. For compensatory damages in the amount of one hour of wages for each day on which
9 a meal and/or rest period was not properly provided to Plaintiff and Class Members pursuant to Labor
10 Code § 226.7;

11 2. For penalties pursuant to Labor Code § 226(e) for Plaintiff and members of the Class;

12 3. For penalties pursuant to Labor Code § 203 for Plaintiff and members of the Class
13 who are no longer employed by Defendants;

14 4. For reimbursement of all expenses incurred by Plaintiff and Class Members pursuant
15 to Labor Code § 2802;

16 5. An award of prejudgment and post-judgment interest;

17 6. For restitution for unfair competition pursuant to Business & Professions Code §
18 17200 *et seq.* for Plaintiff and Class Members;

19 7. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
20 Aggrieved Employees;

21 8. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1)
22 and other applicable law;

23 9. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable
24 law; and

25 10. Such other and further relief as this Court may deem just and proper.

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1 Dated: January 19, 2021

Respectfully submitted,

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3 GAINES & GAINES
A Professional Law Corporation

4
5 By: _____
6 DANIEL F. GAINES
7 EVAN S. GAINES
Attorney for Plaintiff

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

10 Dated: January 19, 2021

Respectfully submitted,

11 GAINES & GAINES
12 A Professional Law Corporation

13 By: _____
14 DANIEL F. GAINES
15 EVAN S. GAINES
Attorney for Plaintiff