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7 Attorneys for Plaintiff George Padilla and Proposed
Class Counsel
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF STANISLAUS**

11
12 GEORGE PADILLA, on behalf of himself
and all "aggrieved employees" pursuant to
13 Labor Code § 2698 *et seq.*,

14 Plaintiff,

15 v.

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

18 Defendants.
19

CASE NO: CV-20-002683

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

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND SEEKING
LEAVE TO FILE SECOND AMENDED
COMPLAINT**

Date: April 6, 2021

Time: 8:30 a.m.

Dept.: 24

Complaint Filed: June 17, 2020

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28 I, DANIEL F. GAINES, hereby declare and state as follows:

1 1. I am an attorney duly admitted to the practice of law in the State of California. I
2 am a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff George Padilla (“Padilla” or
3 “Plaintiff”) and proposed Class Counsel in this action. I have personal knowledge of the facts
4 set forth herein and if called as a witness to testify to them, I could and would do so competently.

5 **Education and Experience:**

6 2. I obtained my BS degree from the University California at Berkeley in 2003. I
7 majored in Business Administration at the Haas School of Business.

8 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I
9 was a member of the editorial board of the Virginia Tax Review. I was also the recipient of the
10 Lacy Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused
11 my studies on tax and real estate. I earned my JD and became a member of the California Bar in
12 2007.

13 4. Since becoming a member of the Bar, I have practiced law with my partner/father,
14 Kenneth, at Gaines & Gaines, APLC. Our practice specializes in litigation, with an emphasis in
15 business, real estate, and employment disputes like this one. Over 75% of my practice is
16 devoted to complex employment litigation similar to the instant action.

17 5. My firm has represented employees in complex employment matters such as this
18 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
19 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases
20 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

21 **Factual and Procedural Background:**

22 6. On April 10, 2020, Plaintiff sent a notice to the California Labor & Workforce
23 Development Agency (“LWDA”) pertaining to alleged wage and hour claims against Defendant.

24 7. On or about June 17, 2020, Plaintiff initiated the Action by filing a Complaint,
25 subsequently amended, pursuant to PAGA on behalf of himself and all other aggrieved
26 employees. The Second Amended Complaint, attached to the Settlement Agreement as Exhibit
27 3 and which will be filed as part of the settlement approval process, asserts direct class and
28 representative action claims against Defendant for (1) failure to provide rest periods or

1 compensation in lieu thereof (Labor Code § 226.7; IWC Wage Order 4-2001); (2) failure to
2 provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7, and 512; IWC
3 Wage Order 4-2001); (3) knowing and intentional failure to comply with itemized employee
4 wage statement provisions (Labor Code §§ 226(a), (e), (h)); (4) failure to timely pay wages due
5 at separation of employment (Labor Code §§ 201-203); (5) failure to reimburse employee
6 business expenses (Labor Code § 2802); (6) violation of Business and Professions Code §
7 17200; and (6) penalties pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 201-
8 203, 226(a), 226.3, 226.7, 512, 558 and 2802. (the “Second Amended Complaint”).

9 **Investigation And Settlement Discussions**

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

23 9. The Class Representative contends that Defendant violated the California Labor
24 Code and that this case is appropriate for class certification.

25 10. My colleagues and I have conducted a thorough investigation into the facts and
26 law during the prosecution of this class action case, including the exchange of extensive informal
27 discovery and the review and verification of statistical data and other facts and information
28 provided by Defendant. My colleagues and I have investigated the applicable law as applied to

1 the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and
2 the damages claimed by Plaintiff.

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

6 12. Based on our independent investigation and evaluation, my colleagues and I are of
7 the opinion that settlement for the consideration and on the terms set forth in this Settlement
8 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
9 light of all known facts and circumstances, including the risk of significant delay, the risk the
10 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.
11 Defendant and its counsel also agree that this settlement is fair and in the best interest of the
12 Settlement Class.

13 13. The Parties thereafter jointly prepared the Settlement Agreement and Release
14 ("Settlement Agreement" or "Stipulation of Settlement" or "Stip."), attached hereto as **Exhibit**
15 **B**. All of the terms of the Parties' settlement are contained within the Settlement Agreement. At
16 all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's
17 length.

18 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**
19 **Litigation:**

20 14. Plaintiff and I recognize the expense and length of continued proceedings
21 necessary to litigate their disputes through trial and any possible appeals. Plaintiff has also taken
22 into account the uncertainty and risk of the outcome of further litigation, as well as the
23 difficulties and delays inherent in such litigation. Plaintiff and my colleagues are likewise aware
24 of the burdens of proof necessary to establish liability for the class and PAGA claims asserted in
25 the Action, both generally and in response to Defendant's defenses thereto, and the difficulties in
26 establishing damages for Settlement Class members and Affected Employees. Plaintiff and my
27 colleagues have also taken into account Defendant's agreement to enter into a settlement that
28 confers substantial relief upon Settlement Class members and Affected Employees. Based on

1 the foregoing, Plaintiff and I have determined that the Settlement set forth in this Settlement
2 Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of Settlement
3 Class members and Affected Employees.

4 15. My office created a comprehensive damage analysis using sampling information
5 obtained through informal discovery. This damage analysis reveals that the negotiated
6 settlement falls within a realistic range of recovery on class members' claims.

7 16. Plaintiff asserts that Defendant failed to pay premium wages to Plaintiff and Class
8 Members who were denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC
9 Wage Order 4-2001. Plaintiff and Class Members were allegedly routinely not authorized and
10 unable to take an off-duty, 10-minute rest period for every four (4) hours of work or major
11 fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period.
12 When they were able to take a rest period, they were oftentimes late, cut short or on-duty, in
13 violation of Labor Code §§ 226.7, 558 and IWC Wage Order No. 4-2001. The maximum value
14 of this claim is approximately \$1,000,000, but required a significant discount for settlement
15 purposes, particularly because of the class certification hurdle and the likelihood of prevailing on
16 the merits was challenging based on Defendant's policies and practices, which it contends
17 comply with California law.

18 17. Plaintiff asserts that Defendant failed to pay premium wages to Plaintiff and Class
19 Members who were denied meal periods, in violation of Labor Code §§ 226.7, 512, 558 and
20 IWC Wage Order 4-2001. Plaintiff and Class Members were allegedly routinely denied, and not
21 authorized to take, an uninterrupted, 30-minute meal period for every shift worked that exceeded
22 five hours in duration, and a second meal period when they worked shifts greater than ten hours,
23 but were not paid premium wages of one hour's pay for each missed meal period. When they
24 were able to take a meal period, they were cut short, late, or on-duty, in violation of Labor Code
25 §§ 226.7, 512 and 558 and IWC Wage Order 4-2001. The maximum value of this claim is also
26 approximately \$1,000,000, based on the same number of shifts as the rest period claim at the
27 same penalty/premium wage rates, and required a significant discount for settlement purposes.
28 Time records demonstrated that meal periods were frequently taken, which would adversely

1 affect Plaintiff's motion for class certification due to Defendant's anticipated waiver argument.
2 In addition, the likelihood of prevailing on the merits at a 100% violation rate was unlikely based
3 on Defendant's policies and practices, which it contends comply with California law. The
4 compromised settlement amount is appropriate and fair given the risks of continued litigation.

5 18. Plaintiff also contends that he and other Class Members were not properly and
6 fully reimbursed for all expenses they incurred, in violation of Labor Code § 2802. The expense
7 reimbursement claims alleged by Plaintiff are his weakest (and smallest dollar value) claim,
8 particularly because of the class certification hurdle and the difficulty in proving a uniform
9 policy and practice denying expense reimbursement. As such, these claims were allocated only
10 a nominal value for settlement purposes.

11 19. Class Members also sought wage statement penalties pursuant to Labor Code §
12 226(e), waiting time penalties pursuant to Labor Code § 203 and PAGA penalties derivative of
13 the underlying violations alleged. The value of these penalties – which are derivative,
14 discretionary, and subject to defenses of their own – could be substantial (totaling slightly in
15 excess of \$1 million), but their recovery carried substantial risk. Plaintiff believed it was
16 unlikely the many of these penalties could be recovered because their value would eclipse the
17 value of alleged underpaid meal and rest period premium wages (if such premium wages were
18 recovered at all), because Plaintiff's claims are novel, and because of Defendant's potential
19 independent defenses to these penalties.

20 20. A discount on the maximum value of Class members' claims was required (and
21 warranted) to resolve the matter at this junction. Plaintiff and Class Members all signed
22 arbitration agreements which would likely preclude any recovery of damages or wages on a
23 groupwide basis, leaving Class Members to fend for their own in individual lawsuits, which
24 would likely not occur. In addition, if Plaintiff could defeat the arbitration agreements and
25 pursue his direct Labor Code claims in court, class certification is a substantial risk in any class
26 action case. Here, while Plaintiff maintains that the requirements of class certification are met,
27 Defendant proffers various arguments why class treatment is not appropriate here, including but
28 not limited to that individualized inquires among class members predominate over common ones

1 – particularly with respect to Plaintiff’s meal and rest period claims. If Defendant was to defeat
2 Plaintiff’s class certification motion, there would be no class wide relief whatsoever, and most
3 class members would likely not file individual claims.

4 21. Plaintiff also faced the risk of a loss on the merits on his claims. Plaintiff’s wage
5 statement claims are highly technical. It is possible that the Court would find that Defendant
6 substantially complied with the requirements of Labor Code section 226(a) such that no penalties
7 would be awarded. It is also possible that the Court would agree with Defendant’s position that
8 its meal and rest period policies and practices complied with the requirements of California law.
9 In such a case, the value of the majority of Plaintiff’s claims would be zero.

10 22. Finally, Plaintiff faced the risk that he would not obtain a maximum
11 damage/penalty award on all (or any of) his claims. For example, Plaintiff seeks discretionary
12 penalties pursuant to the Private Attorneys General Act. Even if Plaintiff did prevail on these
13 claims, it is possible that the Court would not impose all penalties pursuant to its discretionary
14 power to reduce them.

15 23. Defendant strongly contends that its policies and practices do not violate any laws.
16 It contends that its meal and rest break policies properly provided for all meal and rest periods
17 and fully compensated its employees for all time worked. It further contends that the wage
18 statements it provides to its employees are fully compliant with California law and that it
19 reimbursed all business expenses they incurred.

20 24. When the costs and risks of non-certification and loss on the merits are considered,
21 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

22 25. The settlement for each participating Class Member is fair, reasonable and
23 adequate, given the inherent risk of litigation, the risk relative to class certification and the costs
24 of pursuing such litigation. The settlement shall finally resolve all claims of the Class Members
25 as alleged in the Action.

26 **Class Certification Requirements:**

1 26. To date, no class has been certified. The Stipulation of Settlement contains a
2 provision pursuant to which we stipulate to the Court's provisional certification of the
3 approximately 122-member Settlement Class, but do so for purposes of this settlement only.

4 27. Plaintiff contends that class certification is appropriate here. In this case, the Class
5 Members are identifiable from Defendant's employment and payroll records. Further, the
6 Settlement Class is sufficiently numerous to warrant certification. According to Defendant's
7 records, the Class comprises no more than 122 employees.

8 28. The Class Members' claims all stem from a common source: members of the
9 Settlement Class allege that Defendant violated the same Labor Code provisions in connection
10 with their employment in non-exempt positions. All members of the Class seek the same relief
11 under the same California laws (related to unpaid missed rest and meal periods, failure to
12 reimburse expenses, and derivative claims). Under these circumstances, the commonality
13 requirement is satisfied for purposes of certifying the Settlement Class for settlement purposes.

14 29. In this case, named Plaintiff and proposed Class Representative George Padilla is a
15 former employee who worked for Defendant in the State of California during the Settlement
16 Period in a non-exempt position. He contends that Defendant failed to provide meal and rest
17 periods, failed to comply with itemized employee wage statement provisions, failed to reimburse
18 business expenses, and failed to timely pay wages at the separation of employment, in violation
19 of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 512, 558, 2698, 2699, and 2802, among other
20 Labor Code provisions. He has the same claims as those that the members of the Settlement
21 Class would reasonably be expected to bring based on the course of conduct alleged herein.

22 30. Plaintiff Padilla has also demonstrated that he will aggressively and competently
23 assert the interests of the proposed Settlement Class; he has taken an active role in this litigation
24 and has no apparent conflicts with other class members.

25 31. Plaintiff Padilla alleged claims against Defendant related to wrongful termination,
26 for which he was separately represented by independent counsel. These wrongful termination
27 claims have been resolved through negotiations independent from the negotiation of the
28 resolution of the claims asserted in this lawsuit.

1 **Filing of the Second Amended Complaint:**

2 32. To effectuate the settlement, the Parties have agreed that Plaintiff will file a
3 Second Amended Complaint, which alleges all claims to be released through the Settlement. A
4 true and correct copy of the proposed Second Amended Complaint is attached hereto as **Exhibit**
5 **B-3**.

6 **Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

7 33. My office concurrently submitted the Motion for Preliminary Approval and
8 supporting documentation to the LWDA via electronic submission in compliance with Labor
9 Code § 2699(1)(2), the same date that the documents were filed with this Court.

10 I declare, under penalty of perjury, under the laws of the State of California, that the
11 foregoing is true and correct. Executed this 22nd day of February, 2021 at Calabasas, California.

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13 Daniel F. Gaines
14 DANIEL F. GAINES
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EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

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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.

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.

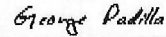
6 **17. Representation Regarding Class Size.**

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:

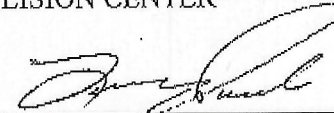


GEORGE PADILLA

Plaintiff and Class Representative

14
15 Dated: January 26, 2021

16 SMITH CHEVROLET CO., INC. dba SMITH
17 COLLISION CENTER

By: 

Its: Lawrence Smith, President

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

21 Dated: January 19, 2021

GAINES & GAINES, APLC

By: Daniel F. Gaines

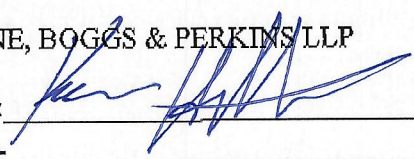
Daniel F. Gaines, Esq.

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
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
GAINES & GAINES, APLC
27200 Agoura Rd., Suite 101
Calabasas, CA 91301
Telephone: (818) 703-8985
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.

28

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
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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.*

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C. Typicality

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

D. Adequacy of Representation

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

E. Superiority of Class Action

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

22. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this 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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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.

11 **VIII.**

12 **FIFTH CAUSE OF ACTION**

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

14 **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