

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
Neil M. Larsen (SBN 276490)
nlarsen@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

RABIH MUSTAPHA, as an individual and on
behalf of all other aggrieved employees,

Plaintiff,

vs.

PALM SPRINGS MOTORS, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

Case No. RIC2003035

*[Case assigned for all purposes to the
Hon. Sunshine S. Sykes; Dept. 6]*

**DECLARATION OF SEAN M.
BLAKELY IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: January 31, 2022

Time: 8:30 a.m.

Dept: 6

Reservation ID: 031052319514

Complaint Filed: August 4, 2020

Trial Date: None set.

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I, SEAN M. BLAKELY, declare as follows:

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

2. I am a 2008 graduate of Southwestern Law School. I was admitted to the California State Bar in September 2009. From December 2010 to September 2011, I worked as a Law Clerk for Rose, Klein & Marias, a civil litigation firm in Long Beach, California. At Rose, Klein & Marias I assisted trial attorneys in employment and personal injury cases. From September 2011 to May 2016, I worked as an associate at the employment law firm of Mahoney Law Group, APC in Long Beach, California. The vast majority of my work at Mahoney Law Group, APC focused on representing employees in wage and hour class actions. My work at Mahoney Law Group, APC also included representing employees in individual claims for wrongful termination, harassment, discrimination, and retaliation. Although non-exhaustive, the types of work I performed at Mahoney Law Group, APC included: conducting client intakes; performing pre-filing research and analysis; drafting complaints; attending court hearings; corresponding with opposing counsel; drafting and responding to written discovery; preparing for and taking and defending depositions; analyzing payroll and timekeeping records and employee handbooks; opposing motions for summary judgment, as well as drafting a variety of other motions such as motions for remand, demurrers and motions to dismiss, motions to strike, motions to compel, motions to quash, and motions for class certification; drafting mediation briefs; attending mediations; drafting and negotiating long-form settlement agreements; drafting motions for preliminary and final settlement approval; and overseeing the notice process.

3. Since November 8, 2016, I have worked at my current firm, Haines Law Group, APC, where, in 2020, I became a Partner. I am currently responsible for managing a caseload of over fifty (50) active wage and hour class actions in both state and federal court.

1 4. The following is a non-exhaustive list of wage and hour class actions in which I
2 have been appointed as class counsel and/or played a significant role in prosecuting the litigation,
3 and which have received final approval: *Santimateo v. Sun Healthcare Group, Inc., et al*, Case
4 No. BC471884, California Superior Court, Los Angeles County, Judge Jane L. Johnson presiding
5 (granted final approval of settlement on behalf of employees at rehabilitation facility involving
6 claims for unpaid wages and meal and rest period violations, and other claims, in which I was
7 approved at an hourly rate of \$325 for work performed in 2012-2013); *Teyuca v. Pacific Alliance*
8 *Medical Center, Inc.*, California Superior Court, Los Angeles County, Judge William F.
9 Highberger presiding (granting final approval of settlement on behalf of healthcare workers for
10 unpaid wages, meal and rest period violations, and other claims, in which I was approved at an
11 hourly rate of \$325 for work performed in 2012-2013); *Arteaga v. Command Center Security,*
12 *Inc.*, Case No. BC480496, California Superior Court, Los Angeles County, Judge John Shepard
13 Wiley, Jr. presiding (granting final approval of settlement on behalf of security guards involving
14 claims for unpaid overtime, meal and rest period violations, and other claims, in which I was
15 approved at an hourly rate of \$425 for work performed in 2012-2015); *Casadine v. Maxim*
16 *Healthcare Services, Inc.*, Case No. CV 12-10078-DMG (CWx), United States District Court,
17 Central District of California, Judge Dolly M. Gee presiding (granting final approval of settlement
18 on behalf of home health care employees involving claims for unpaid wages and other claims, in
19 which I was approved at an hourly rate of \$425 for work performed in 2012-2015); *Guzman v.*
20 *Andrew Lauren Interiors, Inc., et al.*, Case No. BC567757, California Superior Court, Los
21 Angeles County, Judge Elihu M. Berle presiding (granting final approval of settlement on behalf
22 of construction workers involving claims for unpaid wages, meal and rest period violation, and
23 other claims, in which I was approved at an hourly rate of \$425 for work performed in 2014-
24 2016); *Booker v. The Goodyear Tire and Rubber Company*, Case No. BC498399, California
25 Superior Court, Los Angeles County, Judge Amy Hogue presiding (granting final approval of
26 settlement on behalf of tire mechanics involving claims for unpaid wages, meal and rest period
27 violations, and other claims, in which I was approved at an hourly rate of \$425 for work performed
28 in 2013-2015); *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior

1 Court, Los Angeles County, Judge John Shepard Wiley, Jr. presiding (granting final approval of
2 settlement on behalf of IT support workers for overtime, meal and period, reimbursement, and
3 related violations, approved at hourly rate of \$475 for work performed in 2016 and 2017); *Galvan*
4 *v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California
5 Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of
6 settlement on behalf of non-exempt employees of a chemical manufacturing company involving
7 claims for unpaid overtime and waiting time penalties); *Razon v. TTM Technologies, Inc., et al.*,
8 Case No. 37-2016-00038326-CU-OE-CTL, California Superior Court, San Diego County, Judge
9 Gregory W. Pollack presiding (granting final approval of settlement involving claims for unpaid
10 overtime wages, wage statement violations, and meal period violations); *Blank v. Coty, Inc., et*
11 *al.*, Case No. BC624850, California Superior Court, Los Angeles County, Judge William F.
12 Highberger presiding (granting final approval of settlement involving claims for wage statement
13 violations, meal period violations, and other claims); *Morales v. Caremeridian, LLC, et al.*, Case
14 No. BC593191, California Superior Court, Los Angeles County, Judge William F. Highberger
15 presiding (granting final approval of settlement on behalf of direct support professionals involving
16 claims for unpaid wages, meal and rest period violations, wage statement violations, and other
17 claims); *Aguilar v. Act Fulfillment, Inc.*, Case No. RIC1616643, California Superior Court,
18 Riverside County, Judge Sharon J. Waters presiding (granting final approval of settlement on
19 behalf of non-exempt factory workers involving claims for meal period violations); *Sandoval v.*
20 *AMCOR Flexibles Inc.*, Case No. BC617499, California Superior Court, Los Angeles County,
21 Judge Kenneth R. Freeman presiding (granting final approval of settlement on behalf of
22 manufacturing employees involving claims for unpaid wages, meal period violations, rest period
23 violations, and waiting time penalties); *Le v. GBW Railcar Services, L.L.C.*, Case No.
24 RIC1612209, California Superior Court, Riverside County, Judge Sharon J. Waters presiding
25 (granting final approval of settlement on behalf of non-exempt employees of a freight railcar
26 manufacturer involving claims for unpaid overtime and minimum wages, meal period violations,
27 and rest period violations); *Silva v. ADJ Products, LLC*, Case No. BC618581, California Superior
28 Court, Los Angeles County, Judge William F. Highberger presiding (granting final approval of

1 settlement involving claims for unpaid overtime and minimum wages, rest period violations, wage
2 statement violations, and waiting time penalties); *Lira v. Discus Dental, LLC, et al.*, Case No.
3 CIVDS1620402, California Superior Court, San Bernardino County, Judge David Cohn presiding
4 (granting final approval of settlement on behalf of non-exempt manufacturing employees
5 involving claims for unpaid minimum and overtime wages, meal and rest period violations, and
6 other claims); *Gonzales v. PathPoint*, Case No. BC657147, California Superior Court, Los
7 Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf
8 of non-exempt direct support professionals involving claims for meal and rest period violations
9 and other claims); *Duran v. PRADA USA CORP.*, Case No. BC644319, California Superior
10 Court, Los Angeles County, Judge Maren E. Nelson presiding (granting final approval of
11 settlement on behalf of non-exempt commissioned salespersons involving claims for unpaid
12 overtime wages, meal and rest period violations, failure to reimburse for necessary expenditures,
13 and other claims); *Banegas v. UPM, Inc.*, Case No. BC644438, California Superior Court, Los
14 Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf
15 of non-exempt manufacturing employees involving claims for unpaid wages, meal and rest period
16 violations, and other claims); *Palafox v. Pacific Line Clean-Up, Inc.*, Case No. 30-2017-
17 00921632-CU-OE-CXC, California Superior Court, Orange County, Judge William D. Cluster
18 presiding (granting final approval of settlement on behalf of non-exempt employees involving
19 claims for unpaid overtime wages, meal and rest period violations, and other claims); *Janet*
20 *Arroyo v. AST Sportswear, Inc., dba Bayside Apparel Manufacturing, Inc.*, Case No. 30-2017-
21 00909663-CU-OE-CXC, California Superior Court, Orange County, Judge Glenda Sanders
22 presiding (granting final approval of settlement on behalf of non-exempt garment employees
23 involving claims for unpaid minimum wages, meal and rest period violations, and other claims);
24 *Carlos Garcia v. Fabrica International, Inc.*, Case No. 30-2017-00949461-CU-OE-CXC,
25 California Superior Court, Orange County, Judge William D. Cluster presiding (granting final
26 approval of settlement on behalf of non-exempt manufacturing employees involving claims for
27 unpaid minimum and overtime wages, meal and rest period violations, and statutory penalties);
28 *Jonathan Leon v. Piercey West, Inc.*, Case No. BC656874, California Superior Court, Los

1 Angeles County, Judge Amy D. Hogue presiding (granting final approval of settlement on behalf
2 of non-exempt commissioned salespersons and other employees involving claims for unpaid
3 wages, meal and rest period violations, unreimbursed business expenses, and other claims); and
4 *Matthew Tovar, et al. v. Rentokil North America, Inc.*, Case No. BC676386, California Superior
5 Court, Los Angeles County, Judge Daniel J. Buckley presiding (granting final approval of
6 settlement on behalf of non-exempt employees involving claims for unpaid overtime, meal and
7 rest break violations, and other claims); *Seungmin Samantha Lee v. Infor (US) Inc.*, Case No.
8 CGC-18-566393, California Superior Court, San Francisco County, Judge Ethan P. Schulman
9 presiding (granting final approval of settlement on behalf of sales development representatives
10 involving claims for unpaid overtime, meal and rest period violations, and penalty claims); *Tracy*
11 *Aguilar, et al. v. Aero Port Services, Inc.*, Case No. BC659234, California Superior Court, Los
12 Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf
13 of non-exempt employees involving claims for meal and rest period violations, and other claims);
14 *Carlos Perez, et al. v. Moss Bros. Auto Group, Inc., et al.*, Case No. RIC1709905, California
15 Superior Court, Riverside County, Judge Sunshine S. Sykes presiding (granting final approval of
16 settlement on behalf of non-exempt commissioned salespersons involving claims for unpaid
17 wages, meal and rest period violations, other claims); *Julio Alfaro v. Orange Automotive d/b/a*
18 *Kia of Orange*, Case No. 30-2017-00945105-CU-OE-CXC, California Superior Court, Orange
19 County, Judge Randall J. Sherman presiding (granting final approval settlement on behalf of non-
20 exempt commissioned employees involving claims for unpaid wages, meal and rest period
21 violations, unreimbursed business expenses, and penalty claims); *Sepulveda, et al. v. Caliber*
22 *Collision Transport Service LLC, et al.*, Case No. BC669786, California Superior Court, Los
23 Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf
24 of non-exempt commissioned employees involving claims for unpaid wages, meal and rest period
25 violations, and penalty claims); *Mariela Cruz v. Traina Dried Fruit, Inc.*, Case No. 9000819,
26 California Superior Court, Stanislaus County, Judge Marie Sovey Silveira presiding (granting
27 final approval of settlement on behalf of non-exempt employees involving claims for unpaid
28 wages, meal and rest period violations, and penalty claims); *Joshua Anthony v. Semper Solaris*

1 *Construction Inc.*, Case No. 37-2018-00035320-CU-OE-CTL, California Superior Court, San
2 Diego County, Judge Gregory W. Pollack presiding (granting final approval of settlement on
3 behalf of non-exempt employees involving claims for overtime wages, wage statement penalties,
4 waiting time penalties, and PAGA civil penalties); *Fabio Gallo v. Coast Composites, LLC*, Case
5 No. 30-2018-01016120-CU-OE-CXC, California Superior Court, Orange County, Judge Glenda
6 Sanders presiding (granting final approval of settlement on behalf of non-exempt employees
7 involving claims for wage statement violations and PAGA civil penalties); *Maria Jessenia*
8 *Gomez, et al. v. CareMeridian, LLC*, Case No. BC655730, California Superior Court, Los
9 Angeles County, Judge William F. Highberger presiding (granting final approval of settlement
10 on behalf of non-exempt nursing employees involving claims for meal and rest period violations,
11 minimum and overtime violations, and penalty claims); *Alfredo Villarreal v. Spenuzza, Inc.*, Case
12 No. RIC1902836, California Superior Court, Riverside County, Judge Sunshine S. Sykes
13 presiding (granting final approval of settlement on behalf of non-exempt manufacturing
14 employees involving claims for unpaid wages, meal and rest period violations, and various
15 penalty claims); *Rosalie A. Wayman v. San Fernando Valley Automotive, LLC, et al.*, Case No.
16 19STCV35904, California Superior Court, Los Angeles County, Judge Maren E. Nelson
17 presiding (granting final approval of settlement on behalf of commission-based employees
18 involving claims for unpaid minimum wages, meal and rest period violations, and penalty claims);
19 *Danielle Bradley Queen, et al. v. Unlimited Quest, Inc.*, Case No. CIVDS1716151, California
20 Superior Court, San Bernardino County, Judge David Cohn presiding (granting final approval of
21 settlement on behalf of non-exempt Direct Support Professionals and Program Supervisors
22 involving claims for rest period violations, unpaid wages, failure to reimburse for necessary
23 business expenditures, wage statement violations, and other penalty claims); *Fabian Santana, et*
24 *al. v. A.M. Cabinets, Inc.*, Case No. 19STCV00803, California Superior Court, Los Angeles
25 County, Judge Daniel J. Buckley presiding (granting final approval of settlement on behalf of
26 non-exempt employees involving claims for unpaid wages, meal and rest period violations, wage
27 statement violations, failure to reimburse for necessary business expenditures, and other penalty
28 claims); *Jonathan Reyes-Delcid v. SNS Transportation Services Inc.*, Case No. BC683026, Judge

1 Daniel J. Buckley presiding (granting final approval of settlement on behalf of non-exempt
2 employees involving claims for piece-rate violations, unpaid wages, meal and rest period
3 violations, failure to reimburse for necessary business expenditures, and other penalty claims);
4 *Damien Dana Council v. Professional Courier & Newspaper Distribution, et al.*, Case No.
5 BC715054, California Superior Court, Los Angeles County, Judge Amy D. Hogue presiding
6 (granting final approval of settlement on behalf of non-exempt employees involving claims for
7 unpaid wages, meal and rest period violations, and various penalty claims); and *Jose Jimenez v.*
8 *Fenceworks, Inc.*, Case No. 30-2018-01034150-CU-OE-CXC, California Superior Court, Orange
9 County, Judge William D. Claster presiding (granting final approval of settlement on behalf of
10 non-exempt employees involving claims for piece-rate violations, unpaid wages, meal period
11 violations, and various penalty claims).

12 5. I have also moved to certify and have received an order certifying a class action in
13 *Ontiveros v. Safelite Fulfillment, Inc., et al.*, Case No. CV 15-7118-DMG (RAOx), United States
14 District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six
15 classes of employees for rest period violations, wage statement violations, meal period violations,
16 and overtime and double-time violations); and *Vazquez v. Kraft Heinz Foods Company*, Case No.
17 16-CV-02749-WQH (BLM), United States District Court, Southern District of California,
18 Honorable William Q. Hayes, presiding (certifying unpaid wages classes, meal period classes,
19 wage statement class, and waiting time penalty class).

20 6. In 2018, 2019, 2020, and 2021, Thomson Reuters and Los Angeles Magazine
21 recognized me as a Top Young Attorney in Southern California in the annual Rising Star Edition
22 of Super Lawyers. This is an honor awarded to no more than two-and-a-half percent (2.5%) of
23 attorneys under the age of forty in Southern California each year.

24 7. Defendant Palm Springs Motors, Inc. (“Defendant”) owns and operates
25 automotive retailers in California, including Palm Springs Ford, Palm Springs Lincoln, and Palm
26 Springs Mazda. Plaintiff and Class members worked for Defendants in California as commission
27 paid employees during the Class Period.

28 8. On August 4, 2020, Plaintiff filed a Representative Action Complaint against

Defendants for civil penalties under the Private Attorneys' General Act, California Labor Code § 2698 *et seq.* ("PAGA"). As part of the Settlement, the Parties agreed for Plaintiff to file a First Amended Class and Representative Action Complaint ("FAC") to add class-wide claims for: (i) minimum wage violations; (ii) failure to pay all overtime wages; (iii) meal period violations; (iv) rest period violations; (v) wage statement violations; (vi) failure to reimburse necessary business expenses; (vii) waiting time penalties; and (viii) unfair competition. Plaintiff filed the FAC on August 6, 2021.

CMO ¶¶ G(1)(a); G(1)(b)

9. As counsel for Plaintiff, I have been intimately involved in all aspects of this litigation from its inception and believe that the proposed Stipulation of Settlement ("Settlement"), a true and correct copy of which is attached hereto as **Exhibit A**, is an excellent result for the Settlement Class. The proposed Notice of Pendency of Class Action and Proposed Settlement ("Class Notice"), Request for Exclusion Form, and Objection Form (together, the "Notice Packet"), are attached to the Settlement as **Exhibits 1, 2, and 3**, respectively.

CMO ¶ G(2)

10. The Parties have not filed a Notice of Settlement of Entire Case (CM-200).

CMO ¶¶ G(3)(a)(i); G(3)(a)(iv); G(3)(a)(v)

11. According to Defendant, there are approximately 48 Class Members who worked during the Class Period and PAGA Period (the "Class Period" and the "PAGA Period" in this matter are the same time period, i.e., May 27, 2019 through the date of the Court Order granting preliminary approval"). Based on the proposed allocations of the Net Settlement Amount, Class Members will receive average payments of approximately \$2,171.88 (approximately \$2,041.67 exclusive of any PAGA penalties). The lowest potential Individual Settlement Award that a Class Member could receive is estimated to be approximately \$122.22. The highest potential Individual Settlement Award that a Class Member could receive is estimated to be approximately \$4,419.37. Aggrieved employees will receive on average \$130.20 for their share of PAGA civil penalties.

CMO ¶¶ G(3)(a)(ii); G(3)(a)(iii); G(3)(9)

12. As described in the accompanying Motion, Defendant asserts that nearly all Class

1 Members signed valid and enforceable arbitration agreements with class action waivers. Setting
2 aside any arguments as to the merits of Plaintiff's claims, Defendant contends that absent
3 settlement, a class-wide recovery was not possible and that only PAGA civil penalties could
4 potentially be recovered on behalf of the Settlement Class. Accordingly, Defendant maintains that
5 absent its agreement to not raise the arbitration agreements as a defense, any recovery to the Class
6 Members would be significantly smaller per Class Member.

7 13. Plaintiff asserts that Defendant failed to separately compensate Class Members for
8 all required rest periods when they were compensated on a commission-only basis. While Plaintiff
9 acknowledges that Defendant separately compensated its commissioned-based employees for
10 some rest periods during the Class Period, Plaintiff alleges that Defendant did not correctly
11 calculate rest period pay owed in all pay periods during the Class Period. Based on Plaintiff's
12 review of Defendant's timekeeping and payroll records, Plaintiffs calculated Defendant's
13 maximum exposure for unpaid rest period wages if this claim were entirely successful at trial at
14 approximately \$27,953. Defendant argues that its Commission Pay Plans comply with California
15 law and that it has always compensated its commissioned-based employees for all required rest
16 periods. Defendant argues that at all times throughout the Class Period it has calculated separate
17 rest period compensation for its commissioned based employees in accordance with Labor Code
18 § 226.2. Therefore, in light of these arguments, as well as the risk that Plaintiff's class claims
19 could be precluded by the arbitration agreements, Plaintiffs discounted the maximum recovery on
20 this claim by 70% to account for the risk of non-certification and potential inability to proceed on
21 a classwide basis due to the arbitration agreements, and an additional 20% to account for the risk
22 that Defendant could prevail on the merits in establishing a lower damages calculation, to arrive
23 at a reasonably expected total of approximately \$6,709.

24 14. Plaintiff further maintains that Defendant failed to separately compensate Class
25 Members who were paid on a commission-only basis for "non-productive" time, such as time
26 spent attending meetings, and waiting for customers. Plaintiff estimates that Defendant is liable
27 for approximately 15 minutes of unpaid non-productive time per employee per workday.
28 Therefore, Plaintiff estimates that Defendant's maximum exposure for unpaid wages if this claim

were entirely successful at trial is \$202,886 (17,060 shifts with uncompensated hours worked * 15 minutes of non-productive time * \$47.57 average hourly rate). Defendant argues that its Commission Pay Plans comply with California law. Defendant further argues that almost all work performed by commissioned employees was “directly related” to the activities that were being compensated via commissions, and therefore did not need to be separately compensated. Defendant also contends that employees experienced minimal (if any) uncompensated “non-productive” time. Defendant further maintains that any questions of non-productive time would be highly individualized, as employees worked in a variety of locations, and there are no records or other common evidence of time spent on potentially non-productive tasks necessary to establish class-wide liability, thereby precluding certification. In light of these defenses, Plaintiff discounted the maximum figure by 75% to account for a risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and by an additional 35% for risk of being unsuccessful on the merits or having the amount of unpaid wages reduced, to arrive at an estimated realistic exposure of \$32,970.

15. Plaintiff alleges that Defendant failed to list all hourly rates of pay and corresponding hours worked for rest and recovery periods on the wage statements issued to Plaintiff and other non-exempt employees, in violation of Labor Code § 226(a)(9). Specifically, Plaintiff alleges that Defendant only lists the total amount of rest period pay earned (denoted as “Rest/Recovery” on wage statements) and does not list the rate of pay or the corresponding number of hours worked associated with rest period pay. Because rest period compensation constitutes hours worked, Plaintiff argues Labor Code § 226(a)(9) requires that the wage statements list both the rate of pay and the number of rest period hours worked during the pay period. Plaintiff’s data analysis reflected that there were approximately 853 total wage statements issued during the one-year liability period and approximately 48 unique employees during the applicable time period. Plaintiff calculated Defendant’s maximum exposure for wage statement violations if this claim were entirely successful at trial at \$82,900 (48 initial violations * \$50 for initial penalty = \$2,400) + (805 subsequent violations * \$100 subsequent violation penalty = \$80,500). Defendant maintains that any alleged wage statement violations were not “knowing and

intentional,” and Plaintiff cannot show he or other employees “suffer[ed] injury” due to the alleged wage statement violations, as required by Labor Code Section 226(e) for the imposition of penalties. In light of these defenses, Plaintiff discounted the calculated maximum exposure by 70% to account for the risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and an additional 10% for a risk of being unsuccessful on the merits, to arrive at a reasonably expected total of approximately \$22,383.

16. Plaintiff alleges that as a matter of policy and/or practice, Defendant failed to provide Plaintiff and other non-exempt employees with an opportunity to take timely, uninterrupted, and duty-free thirty-minute meal periods before the end of the fifth hour of work and/or a second meal period before the tenth hour of work. Plaintiff estimates that Class Members worked approximately 14,074 shifts during the Class Period in which a compliant meal period was not provided. Accordingly, Plaintiff calculates Defendant’s maximum exposure for meal period violations if this claim were entirely successful at trial at \$669,500 (14,074 shifts with non-compliant meal periods * \$47.57 premium). Defendant counters that it has maintained compliant written meal period policies throughout the Class Period and have always provided employees the *opportunity* to take legally compliant meal periods, and that they are not required to “ensure” meal periods are taken. Additionally, Defendant maintains that employees voluntarily waived their second meal period when they worked shifts in excess of 10.0 hours (but less than 12.0 hours), as they are required to do under Labor Code § 512. Finally, Defendant argues that these claims are not suited for class treatment, as individual inquiries would be needed to assess which employees took non-compliant meal periods or missed meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee did not take a compliant meal period on a particular shift. In light of these arguments, Plaintiff discounted Defendant’s maximum exposure on this claim by 75% to account for a risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and by an additional 35% for risk of being unsuccessful on the merits, for a reasonably expected total of approximately \$108,794.

17. Plaintiff further contends that he and other non-exempt employees were required

1 to use their personal cell phones for a variety of work activities, including communicating with
2 customers. Despite being required to use their personal cell phones for these work activities,
3 Plaintiff alleges that Defendant failed to reimburse Plaintiff and other non-exempt employees for
4 this necessary business expense, in violation of Labor Code §§ 2802 and 2804. Based on
5 Defendant's data, Plaintiff estimated that Class Members worked an estimated 853 pay periods
6 during the Class Period. Assuming a \$25.00 reimbursement per pay period for cellular phone data
7 for work-related activities, Plaintiff estimated Defendant's maximum exposure at approximately
8 \$21,325 (\$25.00 unreimbursed cellular phone data * 853 pay periods). Defendant maintains that
9 Class Members were not required to use their personal cellular phones as part of their job.
10 Defendant further argues that any expenses incurred by Class Members were minimal, given the
11 wide availability of low-cost cellular phone plans. Lastly, Defendant argues this claim is not
12 suitable for class treatment, as it would require individualized determinations as to whether each
13 Class Member used a personal cellular phone for work-related purposes, and if so, how much of
14 that use was a reasonable percentage of their individual monthly phone bill. In light of these
15 arguments, Plaintiff discounted Defendant's maximum exposure on this claim by 70% to account
16 for a risk of non-certification and potential inability to proceed on a classwide basis due to the
17 arbitration agreements, and by an additional 20% for risk of being unsuccessful on the merits, for
18 a reasonably expected total of approximately \$5,119.

19 18. Plaintiff asserts that despite Class Members occasionally working overtime hours,
20 Defendant failed to compensate Class Members for any overtime hours worked. Defendant argues
21 that Class Members were exempt from the Wage Order's overtime requirements pursuant to the
22 "inside sales exemption" pursuant to Wage Order 4 § 3(D) (overtime requirements do not "apply
23 to any employee whose earnings exceed one and one-half (1 ½) times the minimum wage if more
24 than half of that employee's compensation represents commissions"). Defendant further argues
25 that this claim is not suitable for class treatment as an individualized inquiry would be required
26 to determine whether the inside sales exemption was met for each Class Member during each pay
27 period in the Class Period, resulting in an unmanageable series of mini-trials. In light of the
28 "inside sales exemption," Plaintiff determined that it would be very difficult to overcome

1 Defendant's defenses and therefore placed no value on this claim.

2 19. As a result of the unpaid wages and meal and rest period violations described
3 above, Plaintiff alleges that Defendant failed to comply with its final pay obligations set forth in
4 Labor Code §§ 201-203. Defendant's records reflect approximately 27 former Class Members
5 who separated from their employment with Defendant during the Class Period. Based on an
6 hourly rate of \$47.57, Plaintiff estimated the average waiting penalty per former employee to be
7 \$11,417 ($\$47.57 \times 8 \text{ hours} \times 30 \text{ days}$). Therefore, Plaintiff estimates Defendant's maximum
8 exposure for waiting time penalties at approximately \$308,259 (27 waiting time penalty class
9 members * \$11,417 avg. penalty). Defendant maintains that it possesses strong, good faith
10 defenses to Plaintiff's underlying claims, thus precluding recovery of waiting time penalties,
11 which are only available for the "willful" failure to pay wages. Defendant further argues that
12 waiting time penalties are not recoverable at all for alleged meal and rest period violations. In
13 light of these defenses, Plaintiff discounted the maximum figure by 70% to account for a risk of
14 non-certification and potential inability to proceed on a classwide basis due to the arbitration
15 agreements, and by an additional 35% for risk of being unsuccessful on the merits or not
16 recovering the full amount of penalties, for a reasonably expected total of \$60,111.

17 20. As a further result of the above violations, Plaintiff alleges that Defendant is liable
18 for civil penalties under the PAGA. Based on the data provided by Defendant in connection with
19 mediation, Plaintiff estimated approximately 853 pay periods were worked by Class Members
20 during the PAGA Period. Plaintiff estimates a maximum PAGA exposure of \$85,300, based on
21 the \$100 "initial" violation rate for each pay period under Labor Code § 2699(f). Since Plaintiff's
22 PAGA claim is derivative of his underlying claims, Defendant asserts the PAGA claim would fail
23 with those claims. Defendant also maintains that given their good faith defenses, this Court would
24 exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant
25 liable for any of Plaintiff's claims. In light of these defenses, Plaintiff discounted the maximum
26 figure by 40% for being unable to proceed on a representative basis and risk of losing on the
27 merits, and by an additional 35% for risk of the Court reducing penalties, to arrive at an estimated
28 realistic exposure of \$33,267.

21. Therefore, if Plaintiff was entirely successful at trial on all claims described above, Plaintiff estimates the maximum total exposure for all claims to be approximately \$1,398,123. However, taking into account Defendant's various defenses, both as to certification and merits issues, difficulties of proof, and other risks as described above, Plaintiff predicted that the potential likely recovery for the Settlement Class at trial would be approximately \$269,353. The proposed settlement of \$225,000.00 therefore represents 84% of the reasonably forecasted recovery for the Settlement Class, while avoiding the further expense and serious risk of proceeding towards class certification and trial.

CMO ¶ G(3)(a)(vi)

22. In connection with mediation, the parties engaged in significant informal discovery, including Defendant's production of an approximate 11.6% random sampling of timekeeping and payroll data for the Class Members, Defendant's relevant wage and hour policies and "Commission Pay Plans," and other relevant data and information. Defendant also produced a "class list" with all Class Members' hire and termination dates (if applicable). Plaintiff conducted a comprehensive analysis and extrapolation of the timekeeping and payroll data to calculate Defendant's potential exposure for each of Plaintiff's claims. This discovery allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and Defendant's potential defenses.

23. On April 1, 2021, the Parties attended a full-day mediation with Eve Wagner, Esq., a well-respected wage and hour class action mediator. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal bases for Plaintiff's claims and Defendant's defenses. At the conclusion of mediation, Ms. Wagner issued a mediator's proposal for a class-wide settlement, which was ultimately accepted by all Parties and documented in a Memorandum of Understanding ("MOU"). During the months that followed, the Parties negotiated and finalized the long-form Settlement Agreement now before this Court.

CMO ¶¶ G(3)(a)(vii); G(3)(a)(b)

24. I am not aware of any class, representative, or other collective actions in any other

1 court that assert similar claims to those asserted in this action on behalf of a class or group of
2 individuals who would also be members of the proposed Settlement Class. I asked the attorneys
3 at my office if they are aware of any similar actions, and the attorneys whom I have asked are not
4 aware of any such actions. Ryan A. Quadrel, counsel for Defendant, similarly declares that
5 counsel for Defendant is not aware of any actions that assert claims similar to those asserted in
6 this action. *See* Declaration of Ryan A. Quadrel submitted concurrently herewith.

7 **CMO ¶¶ G(3)(c)(i), G(3)(c)(ii), G(3)(c)(iii), G(3)(c)(iv), G(3)(c)(v)**

8 25. Each Class Member who receives a Settlement Award must cash that check within
9 180 days from the date the Settlement Administrator mails it. Any funds payable to Class
10 Members whose checks were not cashed within 180 days after mailing shall be redistributed to
11 those Class Members who have cashed their checks.

12 **CMO ¶¶ G(3)(d)(i); G(3)(d)(ii)**

13 26. The Parties propose that this Settlement be administered by Phoenix Settlement
14 Administrators. The Parties obtained bids for administration from Phoenix Settlement
15 Administrators (\$5,000.00), CPT Group, Inc. (\$6,500.00), and ILYM Group, Inc. (\$6,685.00).
16 The Parties agreed to use Phoenix based on its consistent track record and high-quality settlement
17 administration work performed for hundreds of class action settlements similar to this one, and
18 because it was the lowest bidder. Jodey Lawrence of Phoenix Settlement Administrators will file
19 a declaration attesting to the administrator's experience, fee to be charged, and how such fee was
20 calculated concurrently with Plaintiff's Motion.

21 **CMO ¶¶ G(3)(e)(i), G(3)(e)(ii), G(3)(e)(iii), G(3)(e)(iv), G(9)(d)**

22 27. The Parties have limited the release given by Class Members to the defendants
23 named in the complaint, together with their officers, directors, employees and agents, the claims
24 stated in the operative complaint and those based solely upon the facts alleged in the operative
25 complaint, and only the liability that arose during the Class Period (i.e., "May 27, 2019 through
26 the date of the Court Order granting preliminary approval of the Settlement").

27 28. The release of claims for PAGA penalties binds only the named plaintiff and will
28 release only those claims described in the notice sent by plaintiff to the LWDA, and only to the

1 extent that they are alleged in the complaint. Specifically, the proposed PAGA release provides:
2 “Plaintiff releases all claims for statutory penalties against the Released Parties that could have
3 been sought by the Labor Commissioner for the violations identified in Plaintiff’s May 27, 2020
4 per-filing PAGA letter to the Labor & Workforce Development Agency (“LWDA”). Plaintiff
5 does not release any aggrieved employee’s claim for wages or damages.”

6 **CMO ¶ G(3)(f)**

7 29. Phoenix Settlement Administrators will provide notice of the settlement via first
8 class U.S. mail, postage prepaid, using the last known mailing address information provided by
9 Defendant. This manner of giving notice is the “best notice practicable” under the circumstances
10 because it provides “individual notice to all members who can identified through reasonable
11 effort.”

12 **CMO ¶¶ G(3)(g), G(3)(h)**

13 30. The settlement does not require any of the Class Members to submit claim forms
14 and none of the settlement will revert to Defendant.

15 **CMO ¶¶ G(3)(i), G(3)(j)**

16 31. Employer’s share of taxes will be paid by Defendant separate and apart from the
17 Gross Settlement Amount. Each Individual Settlement Award (excluding any amount paid for
18 PAGA civil penalties) will be allocated as 1/3 wages, 1/3 penalties, and 1/3 interest. This
19 allocation was determined by my firm based on the exposure for the wage claims and penalty
20 claims in this lawsuit. Any amount paid for PAGA civil penalties will be allocated as 100%
21 penalties. The \$6,250.00 representing 25% of PAGA penalties payable to aggrieved employees
22 is apportioned out of the Net Settlement Amount prior to calculating Individual Settlement
23 Awards and will be paid solely to aggrieved employees.

24 **CMO ¶ G(3)(k)**

25 32. Documents to be read by class members do not contain any Latin term or legal
26 terms of arts. They do not include unfamiliar symbols or abbreviations. Scott Simmers,
27 Defendant’s General Manager, is concurrently submitting a declaration attesting to the Class
28 Members likely age, education experience, and ability to read and comprehend English. Class

Members are salespersons who sell automobiles at Defendant's dealerships. Because Class Members are required to communicate with customers in English, and read and write various documents in English, including sales contracts, all Class Members are required to speak and read English.

CMO ¶ G(4)

33. Plaintiff's motion is accompanied by a separate proposed order which includes, as attachments to the order, the proposed class notice, proposed exclusion form, and proposed objection form. The settlement agreement is not attached to the order. My firm has carefully reviewed both the terms and the terminology of the order and accompanying forms (notice, objection form, and exclusion form) to confirm that the various documents are internally consistent; consistent with each other, and consistent with the settlement agreement.

34. The order states the name of the settlement administrator (Phoenix Settlement Administrators) and describes the nature of the services that the administrator will be required to perform by reference to the Settlement Agreement.

35. The order provides that the notice shall be accompanied by an exclusion form that the class members may use. The order provides that any exclusion form will be submitted to the settlement administrator rather than filed with the court. The order does not require the class member to send copies of the exclusion form to counsel, but notes that the settlement administrator is required to do so. The order provides that the settlement administrator will file a declaration concurrently with the filing of any motion for final approval, authenticating a copy of every exclusion form received by the administrator.

36. Neither the order, the class notice, nor the objection form requires an objecting party to appear at the hearing on the motion for final approval for that party's objection to be considered, to file or serve, or to state in the objection, or to submit a notice of intention to appear at the hearing on the motion for final approval.

37. The order provides a proposed date for the Final Approval Hearing. The order requires the administrator to give notice to any objecting party of any continuance of the hearing of the motion for final approval.

38. Neither the order nor the notice purport to enjoin the class members from filing any actions or administrative claims or proceedings pending the final hearing on the settlement, or for any other period.

CMO ¶ G(5)

39. The notice includes an estimate of the likely recovery by the individual Class Member to whom the notice is sent, and provides the range of possible recoveries for Class Members.

40. The notice clearly indicates that the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the final hearing.

41. The notice advises the Class Members of where they can find the settlement agreement, by describing (i) the full title and filing date either of the settlement agreement or of the declaration or other document to which the agreement was attached when filed with the Court, (ii) the address of the courthouse to which the case is assigned, and (iii) the address of the court's website at which the case file can be viewed on-line.

42. Neither the notice nor the documents enclosed with it describe the settlement administrator as the "claims administrator" because Class Members are not required to submit claims.

43. The notice includes a description of the release being given by the Class Members.

44. The notice explains what PAGA is and advises class members/ aggrieved employees that they may neither object to nor opt out of the PAGA settlement.

45. The notice describes the terms of the settlement of the PAGA claim, including who is an aggrieved employee and shall provide an estimate of the individual aggrieved employee's share of the penalties and advise aggrieved employees that the payments will be reported on a Form 1099.

CMO ¶ G(6)

46. This Settlement does not include a claim form because Class Members do not need to submit a claim to receive a share of the Settlement.

CMO ¶ G(7)

47. The objection form instructs the objecting Class Member that the objection must be mailed or delivered to the settlement administrator. The form states the name and address of the settlement administrator and includes the date by which the objection must be mailed or otherwise delivered.

48. The information required to be provided by an objecting Class Member on the objection form does not exceed the minimum information necessary to (i) identify the objector as a person entitled to object to the settlement, (ii) describe the nature of and basis for the objection, and (iii) contact the objector to clarify any uncertainties.

CMO ¶ G(8)

49. The exclusion form (i) instructs the Class Member seeking exclusion that the exclusion form must be mailed or delivered to the settlement administrator, (ii) states the name and address of the settlement administrator, and (iii) states the date by which the exclusion form must be mailed or otherwise delivered.

50. The information required to be provided by a Class Member on the exclusion form does not exceed the minimum information necessary to (i) identify the person as a Class Member and (ii) contact the person to clarify any uncertainties.

51. The exclusion form indicates that exclusion from the class settlement will not result in exclusion from any PAGA settlement.

52. My office will apply for an attorneys' fees award of one-third of the Gross Settlement Amount, which is currently estimated to be \$75,000, and up to \$15,000 in verified costs reimbursement. The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. My office has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, engaging in informal discovery, reviewing Defendant's documents and policies, analyzing Class Members' relevant records, preparing for and attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. Class Counsel expect to expend additional attorney time in attending

1 the hearing on this Motion, overseeing the Notice process and fielding questions from Class
2 Members, preparing the final approval papers, and attending the Final Approval hearing.

3 53. Plaintiff will also apply for an enhancement payment in the amount of \$5,000 for
4 his services to the Settlement Class. I believe this is reasonable given Plaintiff's efforts in this
5 case and the risks he undertook on behalf of the Settlement Class, including the risk that he could
6 be liable for Defendant's costs if this case were unsuccessful. Plaintiff was integral in the
7 prosecution of this action, by, among other things, providing substantial factual information and
8 documents to my office, discussing the claims and theories at issue in the litigation, and otherwise
9 participating in the prosecution of his claims.

10 54. Although the parties engaged in significant discovery in advance of mediation, the
11 Parties still had significant discovery to complete in formal litigation had the matter not settled.
12 This would have required expenditure of substantial time and resources by both Parties that would
13 have very likely spanned several years. Even if Plaintiff was to certify the classes, the parties
14 would incur considerably more attorney fees and costs through a possible decertification motion,
15 trial, and possible appeal. This Settlement avoids those risks and the accompanying expense.

16 I declare under penalty of perjury under the laws of California and the United States that
17 the foregoing is true and correct. Executed on January 6, 2022, at El Segundo, California.

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20 Sean M. Blakely
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EXHIBIT A

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Rabih Mustapha, individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Palm Springs Motors, Inc. (hereinafter “Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Sean M. Blakely, and Neil M. Larsen of Haines Law Group, APC (“Class Counsel”). Defendant is represented by Quynhvi (Vee) B. Sotelo, Katelyn K. Empey, and Ryan A. Quadrel of Slovak Baron Empey Murphy & Pinkey, LLP.

On August 4, 2020, Plaintiff filed a Representative Action Complaint in Riverside County Superior Court, Case No. RIC2003035, for civil penalties under the Labor Code Private Attorneys General Act, Cal. Labor Code § 2698 (“PAGA”). On August 6, 2021, Plaintiff filed the operative First Amended Class and Representative Action Complaint (“FAC”) which alleges the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) failure to reimburse necessary business expenses; (7) waiting time penalties; (8) unfair competition; and (9) civil penalties under the PAGA. The Complaint and the FAC are collectively referred to as the “Action.”

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class or Class Member(s).** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All individuals employed by Defendant Palm Springs Motors, Inc. as commission paid employees in California who worked at any time from May 27, 2019 through the date of the Court Order granting preliminary approval of the Settlement (“Class Period”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Release by Class Members and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who opt out) will fully release and discharge Defendant, and all of their past and present officers, directors, employees, and agents (collectively, the “Released Parties”), as follows:

A. Class Members will release all claims, causes of action, and legal theories alleged in the FAC, or those that could have been alleged based on the facts alleged in the FAC, including: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to provide all meal periods; (4) failure to separately pay

for rest periods; (5) failure to furnish accurate, itemized wage statements; (6) failure to reimburse necessary business expenses; (7) failure to pay timely pay all wages owed upon separation of employment; and (8) all claims for unfair business practices that were premised on the facts, claims, causes of action or legal theories of relief pled in the FAC (collectively, the “Released Claims”). The period of the Release shall extend to the limits of the Class Period.

- B. Plaintiff releases all claims for statutory penalties against the Released Parties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff’s May 27, 2020 pre-filing PAGA letter to the Labor & Workforce Development Agency (“LWDA”). Plaintiff does not release any aggrieved employee’s claim for wages or damages.
- C. In light of Plaintiff’s Class Representative Enhancement Payment, Plaintiff has agreed to release, in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. Plaintiff understands that this release includes unknown claims and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

However, to the extent that Plaintiff has claims that cannot be released as a matter of law (i.e., workers’ compensation claims), then those claims will not be released.

- 3. **Gross Settlement Amount.** As consideration, Defendant has agreed to pay a non-reversionary Gross Settlement Amount (“GSA”) of Two Hundred Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00) in full and complete settlement of the Action, as follows:
 - A. The Parties have agreed to engage Phoenix Settlement Administrators, as the “Settlement Administrator” to administer this Settlement.
 - B. If no objections are filed, the GSA shall be deposited with the Settlement Administrator within thirty (30) calendar days after the Court enters an order granting final approval of the Settlement. Solely in the event that there are any objections to the Settlement (the filing of an objection being a prerequisite to the filing of an appeal), the GSA shall be deposited with the Settlement Administrator within the later of: (i) thirty (30) days after the last date on which any appeal might be filed, with no appeal having been filed, or (ii) thirty (30) days after the resolution of any appeal(s), presuming that the appeal upholds the Settlement.

C. This is a non-reversionary settlement. The Gross Settlement Amount includes:

- (1) All payments (including interest) to the Settlement Class;
- (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Seven Thousand Dollars and Zero Cents (\$7,000.00). If the actual costs exceed Seven Thousand Dollars (\$7,000.00), the additional costs shall be deducted from the Gross Settlement Amount. If the actual costs are less than Seven Thousand Dollars (\$7,000.00), the difference will revert to the participating Class Members;
- (3) Up to Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff's Class Representative Enhancement Payment in recognition of his contributions to the Action and his service to the Settlement Class. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Payment, Plaintiff shall not have the right to revoke this settlement, and it will remain binding. Any amount reduced and/or not approved by the Court will revert to the participating Class Members;
- (4) Up to one-third of the Gross Settlement Amount in Class Counsel's attorneys' fees, plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Fifteen Thousand Dollars and Zero Cents (\$15,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees or costs, Class Counsel shall not have the right to revoke this settlement, and it will remain binding. Any amount reduced and/or not approved by the Court will revert to the participating Class Members; and
- (5) Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Eighteen Thousand Seven Hundred Fifty Dollars and Zero Cents (\$18,750.00) will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining twenty-five percent (25%), or Six Thousand Two Hundred Fifty Dollars and Zero Cents (\$6,250.00), will be payable to the Settlement Class as the "PAGA Amount."

D. Defendant's share of employer-side payroll taxes shall be paid by Defendant separately, and in addition to, the Gross Settlement Amount.

E. **Escalator Clause.** Defendant represents there are approximately 811 pay periods worked by Class Members during the Class Period. If, at the time of preliminary approval, the number of pay periods has increased by 15% or more (i.e., if there are 932 pay periods or more), then Defendant shall increase the Gross Settlement Amount in proportion to the increase in pay periods (e.g., if the actual number of

pay periods is 18% greater than 811 pay periods, Defendant would increase the Gross Settlement Amount by 18%).

4. **Payments to the Settlement Class.** Class Members are not required to submit a claim form to receive a payment (“Settlement Award”) from the Settlement. Settlement Awards will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, Plaintiff’s Class Representative Enhancement Payment, the amount designated as PAGA civil penalties, and the Settlement Administrator’s fees and expenses for administration. The remaining amount shall be known as the “Net Settlement Amount.”
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Class Member’s Settlement Award based on the following formula:
 - i. Payments to participating Class Members: Ninety percent (90%) of the Net Settlement Amount will be distributed to all participating Class Members based on each participating Class Member’s proportionate pay periods worked during the Class Period, and will be determined by multiplying 90% of the Net Settlement Amount by a fraction, the numerator of which is the participating Class Member’s number of pay periods worked during the Class Period, and the denominator of which is the total pay periods worked by all participating Class Members during the Class Period.
 - ii. Waiting Time Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” Each participating Class Member whose employment with Defendant ended at any time during the Class Period shall receive an equal, pro-rata share of the Waiting Time Amount.
 - iii. PAGA Amount: In addition to the Net Settlement Amount, each Class Member who was employed by Defendant during the Class Period (including those Class Members who submit a valid and timely Request for Exclusion from the class action settlement) shall receive a portion of the Six Thousand Two Hundred Fifty Dollars and Zero Cents (\$6,250.00) amount designated as the “PAGA Amount” and shall be paid based on the proportionate number of pay periods that he or she worked during the Class Period.
- C. Within five (5) business days after the Court enters the final approval order, the Settlement Administrator will provide the Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms of the Settlement, including the amount of the employer contribution for payroll taxes to be paid by Defendant. Within ten (10) calendar days following Defendant’s deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement

Administrator will calculate Settlement Award amounts and provide the same to counsel for review and approval. Within seven (7) calendar days of approval by counsel, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to Class Members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel.

- D. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: any payment made from the PAGA Amount shall be treated as 100% penalties. Any payment made from the Net Settlement Amount shall be allocated as one-third (1/3) as wages, one-third (1/3) as penalties, and one-third (1/3) as interest. The Settlement Administrator will be responsible for issuing to participating Class Members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Notwithstanding the treatment of the payments to each Class Member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay, or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- E. Each Class Member who receives a Settlement Award must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Class Members whose checks were not cashed within 180 days after mailing shall be redistributed to those Class Members who have cashed their checks.
- F. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Gross Settlement Amount, which is currently estimated to be Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00), from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award awarded by the Court.

6. **Class Representative Enhancement Payment** Defendant will not object to a request for a Class Representative Enhancement Payment of up to Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff for his time and risk in prosecuting this case, and his service to the Settlement Class. This award will be in addition to Plaintiff's Settlement Award as a Class Member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator. Even in the

event that the Court reduces or does not approve the requested enhancement payment, Plaintiff shall not have the right to revoke this Settlement, and it will remain binding.

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff's seeking permission to pay up to Seven Thousand Dollars and Zero Cents (\$7,000.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices, calculating Settlement Awards, preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Awards have been mailed to all Class Members. The Settlement Administrator shall also give notice of final judgment by posting the final judgment to its website.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines, Sean M. Blakely, and Neil M. Larsen of Haines Law Group, APC as Class Counsel;
- C. Appointing Rabih Mustapha as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as the Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice, Request for Exclusion Form, and Objection Form), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within ten (10) business days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, the dates of employment, and the number of pay periods worked by each Class Member while employed during the Class Period (the "Class Data"). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall: (i) run the names of all Class Members through the National

Change of Address ("NCOA") database to determine any updated addresses for Class Members; (ii) update the address of any Class Member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Class Member; and (iv) mail a Notice Packet to each Class Member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.

- C. Requests for Exclusion. Any Class Member who wishes to opt out of the settlement must complete and mail a Request for Exclusion Form (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
- i. The Notice Packet shall state that a Class Member who wishes to exclude themselves from the class action settlement must submit a Request for Exclusion Form by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, and telephone number of the Class Member; (2) contain a statement that the Class Member wishes to be excluded from the Settlement; (3) be signed by the Class Member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except that a Request for Exclusion not containing a Class Member's telephone number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment thereon. However, Class Members who submit a valid and timely Request for Exclusion from the class action settlement shall still be entitled to their portion of the PAGA Amount described above.
- D. Objections. Class Members who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court). Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless the objections are filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days to file a response to the objections. To be valid, any objection should: (1) contain the objecting Class Member's full name and current address, as well as contact information for any attorney representing the objecting Class Member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline.

- E. Notice of Settlement Award / Disputes. Each Notice Packet mailed to a Class Member shall disclose the amount of the Class Member's estimated Settlement Award as well as all of the information that was used from Defendant's records in order to calculate the Settlement Award, including the Class Member's number of pay periods worked during the Class Period, and whether the Class Member's employment with Defendant ended at any time during the Class Period. Class Members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice Packet, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Award shall be binding upon the Class Member and the Parties.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Class Member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member. Class Members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, an Objection, or a dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Class Member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant's counsel to provide notice of the proposed settlement.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Payment, LWDA payment, and settlement administration costs; and

- C. Entering judgment pursuant to California Rule of Court 3.769. Said judgment shall be posted on the Settlement Administrator's website.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Non-disclosure and Non-publication.** Plaintiff and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Class Members, as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein, or unless otherwise ordered by the Court. Class Counsel shall not report this Settlement in any medium or in any publication, shall not post or report anything regarding Plaintiff's claims on Class Counsel's website, and shall not contact any reporters or media regarding the Settlement. Class Counsel are authorized to make a limited disclosure for the purpose of obtaining approval of the Settlement. For the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel. Plaintiff and Class Counsel are not permitted to disseminate or publish, distribute, or discuss the information provided to the Court in the filings for approval of settlement outside the filings themselves, and any hearing held on those filings, unless ordered by the Court.

13. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

14. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant: Quynhvi (Vee) B. Sotelo, Slovak Baron Empey Murphy & Pinkney, LLP, 1800 E. Tahquitz Canyon Way, Palm Springs, California 92262; sotelo@sbemp.com

if to Plaintiff: Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Ste 180, El Segundo, California 90245; phaines@haineslawgroup.com.

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

17. **Enforcement and Continuing Jurisdiction of the Court.** This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of California, without regard to principles of conflicts of law otherwise applicable to such determination. This Agreement is enforceable pursuant to California Code of Civil Procedure Section 664.6.

DATED: 12/29/2021

Palms Springs Motors, Inc.

By: 
Its: PRESIDENT

DATED:

Rabih Mustapha

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: 12/29/2021

SLOVAK BARON EMPEY MURPHY &
PINKNEY

By: 
Quynhvi (Vee) B. Sotelo
Attorneys for Defendant

DATED:

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

17. **Enforcement and Continuing Jurisdiction of the Court.** This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of California, without regard to principles of conflicts of law otherwise applicable to such determination. This Agreement is enforceable pursuant to California Code of Civil Procedure Section 664.6.

DATED: Palms Springs Motors, Inc.

By: _____
Its: _____

DATED: Jan 4, 2022

Rabih Mustapha

By:  _____
Rabih Mustapha (Jan 4, 2022 19:59 PST)
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: SLOVAK BARON EMPEY MURPHY &
PINKNEY

By: _____
Quynhvi (Vee) B. Sotelo
Attorneys for Defendant

DATED: January 5, 2021

HAINES LAW GROUP, APC

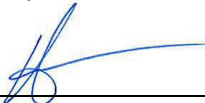
By:   _____
Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

EXHIBIT 1

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT

Rabih Mustapha v. Palm Springs Motors, Inc.

Riverside County Superior Court

Case No.: RIC2003035

To: All individuals employed by Palm Springs Motors, Inc., as commission paid employees in California who worked at any time from May 27, 2019 through <<PRELIM APPROVAL DATE>>.

**PLEASE READ CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this Notice?

The Court has granted preliminary approval of a proposed settlement (the "Settlement") in the matter of *Rabih Mustapha v. Palm Springs Motors, Inc.*, Riverside County Superior Court Case No. RIC2003035 (the "Action"). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from this Settlement. Defendant Palm Springs Motors, Inc.'s (hereinafter "Defendant") records show that you were employed by Defendant as a commission paid employee in California between May 27, 2019 and <<PRELIM APPROVAL DATE>> (the "Class Period"). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Action, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound to the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Rabih Mustapha ("Plaintiff") brought this Action against Defendant, seeking to assert claims on behalf of a class of all current and former commission paid employees who worked for Defendant in California during the Class Period. Plaintiff is known as the "Class Representative," and his attorneys, who also represent the interests of all Class Members, are known as "Class Counsel."

In the Action, Plaintiff alleges that Defendant: (1) failed to pay all minimum wages; (2) failed to pay all overtime wages; (3) failed to provide all meal periods; (4) failed to separately pay for rest periods; (5) failed to furnish accurate, itemized wage statements; (6) failed to reimburse necessary business expenses; (7) failed to pay timely pay all wages owed upon separation of employment; (8) engaged in unfair, unlawful business practices; and (9) is liable for civil penalties under the Private Attorneys' General Act ("PAGA").

A PAGA action is a form of representative action that allows employee plaintiffs to act on behalf of the government as agents of the state's labor law enforcement agencies. By acting as a private attorney general, an "aggrieved employee" who has been affected by at least one Labor Code violation committed by their employer can use a PAGA action as a means to collect civil penalties for those violations. 75% of any collected penalties go to the state's Labor and Workforce Development Agency ("LWDA"), and the remaining 25% of penalties are distributed evenly among all aggrieved employees.

Defendant denies that it has done anything wrong. Defendant also denies that it owes Class Members any wages, restitution, penalties, damages, or other amounts. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff's claims. The Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate and reasonable. Any final determination of whether the proposed Settlement is fair, adequate, and reasonable will be made at the Final Approval Hearing. However, to avoid additional expense, inconvenience, and interference with its business operations, Defendant has

concluded that it is in its best interests to settle the Action on the terms summarized in this Notice. After Defendant provided relevant information to Class Counsel, the Settlement was reached after mediation and arm's length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the inherent risk of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Defendant, your decision about whether to participate in the Settlement will not affect your employment. California law and Defendant's policy strictly prohibit unlawful retaliation. Defendant will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Class Member because of his/her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff/Settlement Class: HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Sean M. Blakely sblakely@haineslawgroup.com Neil M. Larsen nlarsen@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	Attorneys for Defendant: SLOVAK BARON EMPEY MURPHY & PINKNEY LLP Quynhvi (Vee) B. Sotelo sotelo@sbemp.com 1800 E. Tahquitz Canyon Way Palm Springs, California 92262 Tel: (760) 322-2275 Fax: (760) 322-2107 sbemp.com
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class, for settlement purposes only, of all current and former commission paid employees who worked for Defendant in California during the time period of May 27, 2019 through <<PRELIM APPROVAL DATE>>. Class Members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendant as described below.

Defendant has agreed to pay \$225,000.00 (the "Gross Settlement Amount") to fully resolve all claims in the Action, including payments to Class Members, Class Counsel's attorneys' fees and expenses, Settlement administration costs, payment to the LWDA, and the Class Representative's Enhancement Payment.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Action on behalf of Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for up to one-third of the Gross Settlement Amount, which is currently estimated at \$75,000.00, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$15,000.00 in verified costs incurred in connection with the Action.

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the

Settlement. The Court has approved setting aside up to \$7,000.00 from the Gross Settlement Amount to pay the settlement administration costs.

Class Representative Enhancement Payment. Class Counsel will ask the Court to award the Class Representative an enhancement payment in the amount of \$5,000.00 to compensate him for his service and extra work provided on behalf of Class Members.

PAGA Payment to State of California. The parties have agreed to allocate \$25,000.00 towards the Settlement of the PAGA claims in the Action. \$18,750.00 will be paid to the State of California Labor and Workforce Development Agency ("LWDA"), representing its 75% share of the civil penalties. The remaining \$6,250.00 will be allocated to Class Members as the "PAGA Amount" as described below.

Calculation of Individual Class Members' Settlement Awards. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount, which will be distributed to all Class Members who do not submit a valid and timely Request for Exclusion form (described below). The Net Settlement Amount is estimated at approximately \$98,000.

First, 90% of the Net Settlement Amount will be allocated to all participating Class Members in proportion to the number of pay periods that he or she worked during the Class Period. Additionally, 10% of the Net Settlement Amount shall be designated as the "Waiting Time Amount," and will be allocated in equal amounts to all participating Class Members whose employment with Defendants ended during the Class Period. Finally, \$6,250.00 of the Gross Settlement Amount has been designated as the "PAGA Amount." Each Class Member who was employed by Defendant during the Class Period, including those Class Members who exclude themselves from the class action settlement, shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during the Class Period. Each Class Member who was employed by Defendants during the Class Period is estimated to receive approximately \$130.20 as his/her share of penalties under the PAGA.

Payments to Class Members. If the Court grants final approval of the Settlement, individual Settlement Awards will be mailed to all Class Members who did not submit a valid and timely Request for Exclusion from the Settlement.

Allocation and Taxes. For tax purposes, each Settlement Award shall be allocated as follows: any payment made from the PAGA Amount shall be treated as 100% penalties. Any payment made from the Net Settlement Amount shall be allocated as one-third (1/3) as wages, one-third (1/3) as penalties, and one-third (1/3) as interest. The Settlement Administrator will be responsible for issuing participating Class Members IRS Forms W-2 for the amounts allocated as "wages" and IRS Form 1099 for the amounts allocated as penalties and interest. Any payment made from the PAGA Amount shall be treated as 100% penalties and reported on an IRS Form 1099. Class Members are responsible for the proper income tax treatment of the individual settlement payments. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, Plaintiff and every member of the Settlement Class (except those who opt out) will fully release and discharge Defendant Palms Springs Motors, Inc., and its past and present officers, directors, employees, and agents (collectively the "Released Parties") of all claims, causes of action, and legal theories alleged in the First Amended Class and Representative Action Complaint ("FAC"), or those that could have been alleged based on the facts alleged in the FAC, including: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to provide all meal periods; (4) failure to separately pay for rest periods; (5) failure to furnish accurate, itemized wage statements; (6) failure to reimburse necessary business expenses; (7) failure to pay timely pay all wages owed upon separation of employment; and (8) all claims for unfair business practices that were premised on the facts, claims, causes of action or legal theories of relief pled in the FAC (collectively, the "Released Claims"). The period of the Release shall extend to the limits of the Class Period.

Plaintiff releases all claims for statutory penalties against the Released Parties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's May 27, 2020 pre-filing PAGA letter to the LWDA. Plaintiff does not release any aggrieved employee's claim for wages or damages.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the entry of a Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of pay periods you worked for Defendant during the Class Period, as well as whether you separated employment with Defendant during the Class Period. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of pay periods you worked during the Class Period, and whether you have separated employment from Defendant at any time during the Class Period. The information contained in Defendant's records regarding each of these factors, along with your estimated Settlement Award, is listed below. If you disagree with the information listed below, you may submit a dispute, along with any supporting documentation, to <<INSERT ADMINISTRATOR CONTACT INFO>>. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Settlement Administrator will determine whether any adjustments are warranted, and if so, will consult with the Parties and make any adjustments approved by the Parties.

According to Defendant's records:

- (a) you worked for Defendant in California from [REDACTED] to [REDACTED];
- (b) you worked [REDACTED] pay periods between May 27, 2019, and <<PRELIM APPROVAL DATE>> for Defendant; and
- (c) your employment with Defendants <<DID/DID NOT>> ended between May 27, 2019 and <<PRELIM APPROVAL DATE>>.

Based on the above, your Settlement Award is estimated at \$ [REDACTED]. The lowest Settlement Award to a Class Member is estimated at \$122.22. The highest Settlement Award to a Class Member is estimated at \$4,419.37.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the class action settlement, you may exclude yourself by sending to the Settlement Administrator an executed Request for Exclusion Form no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, and your signature. A Request for Exclusion Form is included with this Notice.

Send the Request for Exclusion Form directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion shall, upon receipt by the Settlement Administrator, no longer be a Class Member, and shall be barred from participating in any portion of the Class Action Settlement. However, you may not opt out of the PAGA Settlement, and you will still be entitled to a portion of the PAGA Amount as described above. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it (with the exception of the PAGA Settlement, which you may not object to), you may mail a written objection to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Your written objection should include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Objections should be

in writing and must be postmarked on or before <<RESPONSE DEADLINE>>. An Objection Form is included with this Notice.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department 6 of the Riverside County Superior Court, located at 4050 Main Street, Riverside, California 92501. You have the right to appear either in person or through your own attorney at this hearing. All objections or other correspondence must state the name and number of the case, which is *Rabih Mustapha v. Palm Springs Motors, Inc.*, Riverside County Superior Court Case No. RIC2003035.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 6 of the Riverside County Superior Court, located at 4050 Main Street, Riverside, California 92501. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Class Representative Enhancement Payment. The Final Approval Hearing may be postponed without further notice to Class Members. **You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Riverside County Superior Court, located at 4050 Main Street, Riverside, California 92501, during regular court hours. You may also view the case file online at www.riverside.courts.ca.gov by going to the "Search Court Records" tab, selecting "Civil, Small Claims and Unlawful Detainer Case Information," and entering the case number information. This case is assigned to Department 6 of the Riverside Historic Courthouse, located at 4050 Main Street, Riverside, California 92501. The Settlement Agreement is attached as Exhibit A to the Declaration of Sean M. Blakely In Support of Plaintiff's Motion For Preliminary Approval of Class Action Settlement, filed on January 6, 2022. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, DEFENDANT, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

EXHIBIT 2

REQUEST FOR EXCLUSION FORM

Rabih Mustapha v. Palm Springs Motors, Inc.
Riverside County Superior Court
Case No.: RIC2003035

IF YOU DO NOT WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL OR DELIVER THIS FORM, POSTMARKED ON OR BEFORE [INSERT DATE], ADDRESSED AS FOLLOWS:

[INSERT SETTLEMENT ADMINISTRATOR]
Rabih Mustapha v. Palm Springs Motors, Inc.
SETTLEMENT ADMINISTRATOR
ADDRESS
ADDRESS
PHONE
FAX

DO NOT SUBMIT THIS FORM IF YOU WISH TO BE PART OF THE CLASS ACTION SETTLEMENT.

By signing, filling out, and returning this form, I confirm that I **do not** want to be included in the Settlement of the lawsuit entitled *Rabih Mustapha v. Palm Springs Motors, Inc.*, Riverside County Superior Court Case No. RIC2003035.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *RABIH MUSTAPHA V. PALM SPRINGS MOTORS, INC.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT. HOWEVER, I STILL WILL BE ENTITLED TO RECEIVE A PORTION OF THE SETTLEMENT OF THE CLAIMS BROUGHT PURSUANT TO THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”) AS DESCRIBED IN THE ACCOMPANYING NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT.

Name

Telephone Number

Address

Date

Signature

EXHIBIT 3

OBJECTION FORM

Rabih Mustapha v. Palm Springs Motors, Inc.
Riverside County Superior Court
Case No.: RIC2003035

All objections must be mailed or delivered directly to the Settlement Administrator, [INSERT SETTLEMENT ADMINISTRATOR], at <<INSERT ADMINISTRATOR CONTACT INFO>> on or before <<RESPONSE DEADLINE>>. All objections must be postmarked or delivered on or before <<RESPONSE DEADLINE>>.

Objecting Class Member Information:

Name

Telephone Number

Address

Date

Signature

Describe the nature and basis of each objection and please attach additional pages if necessary:
