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PATRICIA HERNANDEZ

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

PATRICIA HERNANDEZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

FRED M. BOERNER MOTOR CO., a
California corporation; and DOES 1 through
100,

Defendants.

Case No. 19STCV28136

*[Assigned for All Purposes to Hon. William F.
Highberger, SSC-10]*

**DECLARATION OF SCOTT M.
LIDMAN IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: August 11, 2020
Time: 1:30 p.m.
Dept.: SSC-10

Complaint Filed: August 12, 2019
Trial Date: None Set

1 I, SCOTT M. LIDMAN, declare as follows:

2 1. I am a shareholder and principal of the law firm Lidman Law, APC, and counsel for the
3 named Plaintiff Patricia Hernandez (“Plaintiff”) and the proposed Settlement Class in the above-
4 captioned matter. I am a member in good standing of the bar of the State of California and am admitted
5 to practice in this Court. I have personal knowledge of the facts stated in this declaration and could
6 testify competently to them if called upon to do so.

7 2. I am a 1998 graduate of Santa Clara University School of Law, where I graduated *summa*
8 *cum laude*. During law school, I worked as a summer associate for the international employment law
9 firm of Littler Mendelson, P.C., located in Los Angeles, California.

10 3. Since graduating from law school, my practice has focused exclusively on employment
11 litigation. In September 1998, I began working as an associate attorney at the international law firm of
12 Littler Mendelson P.C., at its Los Angeles office, which according to its website is the largest law firm
13 in the world exclusively devoted to representing management in employment, employee benefits and
14 labor law matters.

15 4. In 2000, I left Littler Mendelson to work at the Los Angeles office of Jones Day, which
16 was at the time one of the largest international firms in the world. During my employment at Jones
17 Day, I worked exclusively in the labor and employment department. In or around 2003, I went to work
18 at the law firm of Loeb & Loeb, again working exclusively in the Labor & Employment department. In
19 2008, I returned to Littler Mendelson, was promoted to Shareholder in 2009, and from 2008 until the
20 end of 2017, I practiced exclusively labor and employment law, with a strong emphasis and most of my
21 time working on wage and hour class actions venued in both state and federal courts. During that time
22 and my legal career in general, I also worked on a number of single and multi-plaintiff wage and hour
23 matters as well.

24 5. During my employment at Littler Mendelson, I played a significant role in the class
25 actions that I was staffed on, and ran many on my own both as an Of Counsel and as a Shareholder. In
26 particular, I received a wide-array of wage and hour class action experience performing the following
27 types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions from state court
28

1 to federal court; drafting and responding to written discovery; drafting and opposing discovery related
2 motions; arguing discovery related motions; drafting motions to consolidate related matters;
3 interviewing putative class members and obtaining declarations in connection with class certification;
4 drafting oppositions to motions for class certification; drafting motions for decertification following
5 class certification; conducting exposure analyses to assess the strengths and weaknesses of asserted
6 claims, the likelihood of prevailing at class certification and potential damages resulting from such
7 claims; drafting mediation briefs; serving as the primary contact to in-house counsel; deposing named
8 plaintiffs and putative class members; deposing retained expert witnesses; and defending the depositions
9 of corporate witnesses. I also was involved in the negotiations and settlements of many large wage and
10 hour class actions. In short, I played an integral role in all aspects of litigation from the inception of a
11 matter through and beyond class certification. I also supervised the work of several junior attorneys
12 who were staffed on the same wage and hour class actions.

13 6. Although not exhaustive, below is a list of many of the wage and hour class and PAGA
14 actions that I performed substantial work on while I was a shareholder at Littler Mendelson:

- 15 ► *Ortega v. J.B. Hunt Transport, Inc.*, Case No. 07-cv-8336-RGK-AFMx, United
16 States District Court, Central District of California, Honorable Gary Klausner,
17 presiding¹.
- 18 ► *Aceves v. J.B. Hunt Transport, Inc.*, Case No. CIVDS1306133, California
19 Superior Court, County of San Bernardino, Honorable Michael Sachs, presiding.
- 20 ► *Moreno v. J.B. Hunt Transport, Inc.*, Case No. BC388612, California Superior
21 Court, County of Los Angeles, Honorable Mel Red Recana, presiding.
- 22 ► *Newcomb v. J.B. Hunt Transport, Inc.*, Case No. RG16815734, California
23 Superior Court, County of Alameda, Honorable Winifred Smith, presiding.
- 24 ► *Vaquero v. Stoneledge Furniture, LLC, et al.*, Case No. 12-cv-08590-PA-MAN,
25 United States District Court, Central District of California, Honorable Percy
26 Anderson, presiding.

27 ¹ My work on this matter including proceedings not only in District Court, but also work before the United States Court of
28 Appeals for the Ninth Circuit as well as the United States Supreme Court.

- 1 ► *Vaquero v. Stoneledge Furniture, LLC, et al.*, Case No. BC388612, California
2 Superior Court, County of Los Angeles, Honorable Elihu Berle, presiding.²
- 3 ► *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx, United
4 States District Court, Central District of California, Honorable Percy Anderson,
5 presiding.
- 6 ► *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx, United
7 States District Court, Central District of California, Honorable Percy Anderson,
8 presiding.
- 9 ► *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932, California
10 Superior Court, County of Los Angeles, Honorable Jane Johnson, presiding.³
- 11 ► *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346, California
12 Superior Court, County of Orange, Honorable Thierry Patrick Colaw, presiding.
- 13 ► *Sakkab v. Luxottica Retail North America, Inc.*, Case No. 12-cv-00436-GPC-
14 KSC, United States District Court, Southern District of California.⁴
- 15 ► *Page v. Oakley, Inc.*, Case No. FCS041512, California Superior Court, County
16 of Solano, Honorable Paul Berman, presiding.
- 17 ► *Ramirez v. Oakley, Inc.*, Case No. 30-2014-00731617-CU-OE-CJC California
18 Superior Court, County of Orange, Honorable William Claster, presiding.
- 19 ► *Ramirez v. Oakley, Inc.*, Case No. 30-2014-00723846-CU-DE-CXC, California
20 Superior Court, County of Orange, Honorable William Claster, presiding.
- 21 ► *Sierra v. Oakley, Inc.*, Case No. 13-cv-00319-AG-JPR, United States District
22 Court, Central District of California, Honorable Andrew Guilford, presiding.⁵
- 23
- 24
- 25

26 ² My work on this matter included proceedings not only in the trial court, but also before the California Courts of Appeal
27 and the California Supreme Court.

28 ³ This matter was consolidated and litigated collectively with Case Nos. BC380923, BC 381523 and BC 406663.

⁴ The work I performed on this case included work in the United States Court of Appeals for the Ninth Circuit.

⁵ The work I performed on this case included work in the United States Court of Appeals for the Ninth Circuit.

- 1 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
2 States District Court, Central District of California, Honorable Margaret Morrow,
3 presiding.
- 4 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
5 States District Court, Central District of California, Honorable Margaret Morrow,
6 presiding.
- 7 ▶ *Khelghatian v. Comerica Bank, et al.*, Case No. 11-cv-7689-DSF-FFMx, United
8 States District Court, Southern District of California, Honorable John A.
9 Houston, presiding.
- 10 ▶ *Babasa v. Comerica Bank, et al.*, Case No. 11-cv-0595-JAH-BGS, United States
11 District Court, Central District of California, Honorable Margaret Morrow,
12 presiding.
- 13 ▶ *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United States
14 District Court, Central District of California, Honorable Margaret Morrow,
15 presiding.
- 16 ▶ *Khalili v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
17 States District Court, Northern District of California.
- 18 ▶ *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-CTL,
19 California Superior Court, County of San Diego, Honorable Jeffrey B. Barton,
20 presiding.
- 21 ▶ *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California Superior
22 Court, County of Santa Clara.
- 23 ▶ *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California Superior
24 Court, County of Los Angeles, Honorable Terry Green, presiding.
- 25 ▶ *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California Superior
26 Court, County of San Francisco.

1 ► *Smith v. Werner Enterprises*, Case No. 15-cv-02978-RS, United States District
2 Court, Northern District of California, Honorable Richard Seeborg, presiding.

3 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to open my own
4 law firm, Lidman Law, APC, to represent employees with work-related claims, including primarily
5 wage and hour claims and almost exclusively on a class-action basis. I am the President and Shareholder
6 of Lidman Law. Currently, over ninety percent (90%) of my practice is dedicated exclusively to the
7 prosecution of wage and hour class actions, and I am currently responsible for prosecuting over sixty-
8 five (65) wage and hour class actions filed in State courts throughout California, with several of them
9 having been removed to Federal courts. I believe that my professional experience renders me more than
10 qualified to serve as class counsel in this lawsuit involving claims of underpaid overtime and minimum
11 wages, meal and rest period violations, and derivative penalty claims. Not only have I litigated dozens
12 of wage and hour cases throughout my career involving similar claims, including the wage and hour
13 class actions identified above, I have litigated similar claims from both plaintiff and defense
14 perspectives. As a result, I am able to realistically assess and evaluate the facts and legal arguments
15 that can be made in pursuit and defense of similar wage and hour claims, as well as those facts and
16 arguments in support and in opposition to class certification. Consequently, I am able to appreciate the
17 significant risks, uncertainties, and delay involved in wage and hour class action litigation.

18 8. I have been appointed Class Counsel in: *Guardado v. Wesley Allen, Inc.*, Case No.
19 BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl
20 presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court, County of Los
21 Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances, Inc.*, Case No. 30-
22 2017-00964213-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge
23 William Claster presiding; *Hanke v. C&W Facility Services, Inc.*, Case No. CIVDS1814412,
24 California Superior Court, County of San Bernardino, Honorable Judge David Cohn presiding; *Molina*
25 *v. Mader News, Inc.*, Case No. BC685960, California Superior Court, County of Los Angeles,
26 Honorable Judge Yvette M. Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc.*, Case
27 No. BC688326, California Superior Court, County of Los Angeles, Honorable Judge William F.

Highberger presiding; *Rodriguez v. H.F. Cox, Inc.*, Case No. BC653164, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Teran v. Western Plastics, Inc.*, Case No. RIC1722619, California Superior Court, County of Riverside, Honorable Judge Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc.*, Case No. BC688477, California Superior Court, County of Los Angeles, Honorable Judge Daniel J. Buckley presiding; *Huynh v. Polypeptide Laboratories, Inc.*, Case No. BC680872, California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Guzman v. Century Blinds*, Case No. RIC1723654, California Superior Court, County of Riverside, Honorable Judge Sunshine S. Sykes presiding; *George v. Convergence Marketing*, Case No. CIVDS1901039, California Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Coffee, et al. v. Flyers Transportation Energy, LLC*, Case No. 34-2017-00222084, California Superior Court, County of Sacramento, Honorable Judge Alan G. Perkins presiding; *Romero v. Fillmore Hospitality, LLC*, Case No. BC705667, California Superior Court, County of Los Angeles, Honorable Judge Maren E. Nelson presiding; *Wennerstrom, et al. v. Giant Inland Empire R.V. Center*, Case No. CIVDS1617291, California Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Contreras, et al. v. Letter Ride, LLC*, Case No. 37-2018-00020841-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge Eddie C. Sturgeon presiding; *Davis v. WeDriveU*, Case No. 18CV322578, California Superior Court, County of Santa Clara, Honorable Judge Brian C. Walsh presiding; and *Acuna v. Canton Food Co., Inc.*, Case No. BC685001, California Superior Court, County of Los Angeles, Honorable Judge David S. Cunningham presiding.

9. As co-lead counsel for Plaintiff Hernandez and the proposed Settlement Class, I have been intimately involved in every aspect of this case from its inception through the present, and I believe that the proposed Settlement is a favorable result for the Settlement Class Members under the circumstances presented.

10. According to its website, Defendant Fred M. Boerner Motor Co. (“Boerner Motor” or “Defendant”), sells new and used trucks, parts and accessories as both a wholesaler and retailer. On

1 August 12, 2019, Plaintiff filed a putative class action complaint against Boerner Motor in Los Angeles
2 County Superior Court. Pursuant to the terms of the Stipulation of Settlement (“Settlement”), subject
3 to Court approval, the Parties stipulated to allow Plaintiff to file a First Amended Class and
4 Representative Action Complaint (“FAC”) adding the following causes of action for: (1) Defendant’s
5 failure to provide accurate, itemized wage statements and (2) civil penalties under the Labor Code
6 Private Attorneys General Act of 2004 (“PAGA”). A true and correct copy of the Settlement is attached
7 hereto as **Exhibit 1**. The proposed First Amended Class and Representative Action Complaint (“FAC”) is
8 attached to the Settlement as Exhibit A. The proposed Notice of Pendency of Class Action and
9 Proposed Settlement and Notice of Individual Settlement Award are attached as Exhibit B to the
10 Settlement. Therefore, Plaintiff’s primary allegations are that Boerner Motor: (1) failed to provide all
11 legally required meal periods; (2) failed to authorize and permit all legally required rest periods; (3)
12 failed to provide accurate, itemized wage statements; (4) failed to timely pay all wages upon
13 termination; (5) engaged in unlawful business practices; and (6) is liable for civil penalties under the
14 Labor Code Private Attorneys General Act of 2004 (“PAGA”).

15 11. After agreeing to participate in early mediation, Boerner Motor informally produced a
16 sampling of time records and payroll data for the putative class, as well as its wage and hour policies
17 and other relevant documents and information relevant to the claims alleged in advance of mediation.
18 Plaintiff retained an expert to conduct an analysis of the payroll data and time records produced by
19 Defendant to calculate Defendant’s potential exposure for Plaintiff’s claims. After the detailed review
20 of the payroll and time records and other documents and policies produced by Boerner Motor, Class
21 Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of
22 Plaintiff’s case. This discovery allowed the parties to assess the merits and value of Plaintiff’s claims
23 and Boerner Motor’s defenses thereto, if a settlement could not be reached.

24 12. On May 5, 2020, after extensive research and analysis, including a detailed analysis of
25 Defendant’s potential exposure by Plaintiff’s retained expert who holds a Ph.D. in economics, a full-
26 day mediation was held with Steven G. Mehta, a well-respected wage and hour class action mediator.
27 During mediation, the parties vigorously debated their opposing legal positions, the likelihood of
28 certification of Plaintiff’s claims, as well as the legal basis for the claims and defenses. After a full

day mediation, the Parties reached agreement and executed a Memorandum of Understanding (“MOU”). Thereafter, the Parties signed the Settlement.

13. The monetary terms of the Settlement are summarized below:

Gross Settlement Amount (“GSA”):	\$262,000.00
Minus Court-approved attorneys’ fees (1/3 of GSA):	\$87,333.33
Minus Court-approved, verified costs (up to):	\$22,000.00
Minus Court-approved Class Representative Service Award (up to):	\$6,500.00
Minus Settlement Administration Costs:	\$6,250.00
Minus PAGA payment:	\$10,000.00
Net Settlement Amount (“NSA”):	\$129,916.67

Defendant shall pay the Gross Settlement Amount within thirty (30) calendar days after the “Effective Date” which is defined as the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf of Class Members have been filed and not withdrawn; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed (“Effective Date”). See Settlement ¶ 5. B. After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment, the Settlement requires Boerner Motor to pay a Net Settlement Amount (“NSA”) of at least **\$129,916.67** to all Settlement Class members who do not timely opt out. This amount does not include the \$2,500.00 PAGA Amount to be paid to the Settlement Class members.

14. According to Boerner Motor, there are approximately 46 total Settlement Class members defined as:

All current and former non-exempt, hourly, employees of Defendant Fred M. Boerner Motor Co. who worked in California at any time from August 12, 2015 through September 2, 2020 or the date the Court grants preliminary approval, whichever is earlier.

Thus, the average Settlement Award is projected to be approximately **\$2,878.62**, a fair recovery per person.

1 15. Settlement Class members' claims arise from Boerner Motor's common, uniform
2 policies and practices that applied to Settlement Class members during the class period. Specifically,
3 Plaintiff alleged that Boerner Motor's common and uniform policies and practices resulted in the
4 following violations: (1) failure to provide all legally required meal periods; (2) failure to authorize
5 and permit all legally required rest periods; (3) failure to provide accurate, itemized wage statements;
6 (4) failure to timely pay all wages upon termination; (5) unlawful business practices; and (6) liability
7 for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA").

8 16. Plaintiff alleges that she and Settlement Class members were not provided with all
9 legally-required off-duty first meal periods beginning before the end of the fifth hour of work.
10 Specifically, Plaintiff alleges that due to Boerner Motor's work demands, Plaintiff was typically not
11 provided an uninterrupted meal period as she was often asked to perform tasks during a given meal
12 period. Plaintiff alleges that Boerner Motor imposed such a high demand on Plaintiff and other non-
13 exempt employees, that Plaintiff and other non-exempt employees would often have to wait until there
14 was a lull in assignments before being permitted to take a meal period. Furthermore, despite starting
15 her scheduled shift at approximately 8:00 a.m., Plaintiff alleges that she was often not permitted to take
16 her meal break until 1:30 p.m., well after the end of her fifth hour of work. Therefore, Plaintiff
17 calculated Boerner Motor's maximum exposure for the alleged meal period violations at approximately
18 \$285,870.34 (36,568 shifts 6.0 hours or greater x 53% violation rate x 14.75 [average hourly rate]).

19 17. Boerner Motor counters that it has always provided non-exempt employees with an
20 opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in
21 employee timekeeping records were solely the result of employee choice, rather than any policy or
22 practice of Boerner Motor. Boerner Motor points out that under *Brinker Restaurant Corp. v. Superior*
23 *Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods,
24 not "ensure" meal periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at
25 1038 (rejecting "ensure" standard). Finally, Boerner Motor contends Plaintiff's meal period claim is
26 not suited for class certification, since individual inquiries would be required to assess which
27 employees took non-compliant meal periods, how many meal periods were non-compliant or missed,
28

1 and the reasons why a particular employee took a non-compliant meal period or missed a meal period
2 during a particular shift. Accordingly, Plaintiff discounted the maximum exposure by 20% for the risk
3 of non-certification, and an additional 20% to account for Boerner Motor's defenses on the merits to
4 arrive at an estimated exposure of \$182,957.02.

5 18. Plaintiff alleges that she and other Settlement Class members were not separately
6 compensated for required rest periods. Specifically, Plaintiff alleges that while working for Defendant,
7 she was unable to take a 10-minute rest period for every 4-hour period worked, or *major fraction thereof*,
8 due to the work demands. Further, Plaintiff alleges that the policy stated in the employee handbook
9 failed to permit and authorize legally compliant rest periods. Accordingly, Plaintiff calculated Boerner
10 Motor's maximum exposure at \$550,189.75 (37,301 shifts over 3.5 hours x \$14.75 [average hourly
11 rate]).

12 19. Boerner Motor contends it has always maintained and enforced lawful rest period
13 policies and practices, and that Settlement Class Members were authorized and permitted to take all
14 off-duty rest periods in compliance with California law. Further, Boerner Motor argues that Plaintiff's
15 rest period claims are inherently unsuited for class treatment as it requires an individualized inquiry
16 into whether each Settlement Class member was in fact authorized and permitted to take a compliant
17 rest period, which would devolve into an unmanageable series of mini-trials. Accordingly, Plaintiff
18 discounted the maximum exposure by 20% for the risk of non-certification, and an additional 30% to
19 account for Boerner Motor's defenses on the merits to arrive at an estimated exposure of \$308,106.26.

20 20. Plaintiff further alleges that Boerner Motor issued inaccurate wage statements in
21 violation of Labor Code § 226 as a result of the alleged unpaid meal and rest period premium wages
22 described above. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a)
23 because the wage statements issued to Settlement Class Members did not include all hours worked and
24 the rate at which they were being paid. Therefore, Plaintiff calculated Boerner Motor's maximum
25 exposure for wage statement violations at approximately \$142,800.00 (($\50.00×28 current
26 employees) + ($\$100.00 \times 1,414$ subsequent wage statements)).

1 21. Boerner Motor argues that meal and rest period claims cannot support a claim for wage
2 statement penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444..
3 Boerner Motor further argues that its alleged wage statement violations could not be shown to be
4 “knowing and intentional,” and that Plaintiff cannot show that she or any other employee “suffer[ed]
5 injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for
6 imposition of penalties. As such, Plaintiff discounted the calculated exposure by 40% for a risk of
7 non-certification and an additional 30% for a risk of being unsuccessful on the merits to arrive at an
8 estimated total of \$59,976.00.

9 22. Plaintiff alleges that Boerner Motor is also liable for waiting time penalties under Labor
10 Code section 203 as a result of its failure to pay all wages. Based on the data provided by Boerner
11 Motor, there were approximately 16 Settlement Class members who have separated their employment
12 with Boerner Motor during the relevant time period who could be entitled to waiting time penalties.
13 Therefore, Plaintiff calculated Boerner Motor’s maximum exposure for waiting time penalties at
14 approximately \$56,640.00 (16 former employees x \$14.75 [average regular rate] x 30 days x 8
15 hours/day).

16 23. Boerner Motor asserts it has strong defenses to the waiting time claim because there
17 exist good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. *See*
18 *also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition
19 of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good
20 faith dispute” over whether employee was exempt precluded imposition of waiting time penalties over
21 contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by 30% for the risk
22 of non-certification, and an additional 30% to account for Boerner Motor’s defenses on the merits to
23 arrive at an estimated exposure of approximately \$27,753.60.

24 24. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged
25 Labor Code violations. Plaintiff calculated Boerner Motor’s exposure at \$144,200.00 (1,442 pay
26 periods x \$100 initial violation rate).

1 25. Boerner Motor argues that Plaintiff's PAGA claim will fail for the same reasons that
2 her underlying claims will fail. Therefore, Plaintiff discounted the maximum exposure figure by 30%
3 for a risk of being unsuccessful on the merits, and an additional 40% to account for the possibility of
4 this Court reducing penalties, to arrive at an estimated exposure of \$60,564.00.

5 26. Using these estimated figures for each of the claims described above, Plaintiff predicted
6 the realistic total recovery for the Settlement Class would be approximately \$639,356.88. The proposed
7 settlement of \$262,000.00 therefore represents approximately 40.9% of the reasonably forecasted
8 recovery for the Settlement Class. Preliminary approval is appropriate as the settlement will provide
9 tangible monetary relief to Settlement Class members, and will still provide an average recovery to
10 Settlement Class members of over \$2,800.

11 27. Here, Class Counsel will also apply for an attorneys' fees award of one-third of the
12 GSA, which is currently estimated to be \$87,333.33, and up to \$22,000.00 in verified costs
13 reimbursement. Plaintiff submits the requested fee is fair compensation for undertaking complex,
14 risky, expensive, and time-consuming litigation on a purely contingent fee basis. Further, Plaintiff has
15 provided written approval of the split of attorneys' fees in this action. Class Counsel has incurred
16 substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting
17 legal research, reviewing Boerner Motor's documents and policies, analyzing Settlement Class
18 members' timekeeping data and payroll records, reviewing Boerner Motor's financial documents,
19 preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing
20 this Motion, and otherwise litigating the case. Class Counsel expect to expend additional attorney time
21 in attending the hearing on this Motion, overseeing the Notice process and fielding questions from
22 Settlement Class members, preparing the final approval papers and attending the Final Approval
23 hearing.

24 28. Plaintiff has provided written approval of the split of attorneys' fees in this action:
25 46.5% to Haines Law Group, APC, 31% to Lidman Law, APC, and 22.5% to Michael Burgis &
26 Associates, P.C. Michael Burgis & Associates, P.C. is the referring attorney.

27 29. Plaintiff will seek a service award of 6,500.00 at the time of seeking final approval, and
28 I believe this is reasonable given Plaintiff's efforts in this case and the risks she undertook on behalf

1 of the Settlement Class members, including the risk that she could be liable for Boerner Motor's costs
2 if this case was unsuccessful. Plaintiff was integral in the prosecution of this action, by, among other
3 things, providing substantial factual information and documents to Class Counsel, attending multiple
4 meetings with Class Counsel to discuss the claims and theories at issue in the litigation, and otherwise
5 actively participating in the prosecution of their claims.

6 30. Although the parties engaged in informal discovery throughout this action, the parties
7 still had significant discovery to complete in formal litigation had the matter not settled. Moreover,
8 Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of a
9 disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. Even if
10 the classes sought to be certified by Plaintiff were in fact certified, the parties would incur considerably
11 more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal.
12 This Settlement avoids those risks and the accompanying expense.

13 I declare under penalty of perjury under the laws of the State of California that the foregoing is
14 true and correct. Executed on July 16, 2020, at El Segundo, California.

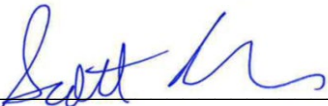
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16 
17 Scott M. Lidman

EXHIBIT 1

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Patricia Hernandez (“Plaintiff”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Fred M. Boerner Motor Co. (“Boerner Motor” or “Defendant”), on the other hand. Plaintiff and Boerner Motor are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines of Haines Law Group, APC and Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC (collectively, “Class Counsel”). Boerner Motor is represented by Rob Cutbirth and Joseph Suarez of Freeman Mathis & Gary LLP.

On August 12, 2019, Plaintiff filed a Complaint against Defendant in Los Angeles County Superior Court, in the matter entitled *Patricia Hernandez v. Fred M. Boerner Motor Co.*, Case No. 19STCV28136 (the “Action”). In the operative Complaint, Plaintiff alleged that Boerner Motor: (i) failed to provide all required meal periods; (ii) failed to authorize and permit all required rest periods; and (iii) failed to pay all wages owed upon termination of employment. As a result of the foregoing alleged violations, Plaintiff contends that Boerner Motor is further liable to Plaintiff and the Settlement Class (defined below) because it engaged in unlawful business practices. Boerner Motor denies Plaintiff’s claims.

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

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Boerner Motor stipulate to the certification of the following Settlement Class:

All current and former non-exempt, hourly, employees of Defendant Fred M. Boerner Motor Co. who worked in California at any time from August 12, 2015 through September 2, 2020 or the date the Court grants preliminary approval, whichever is earlier.

For purposes of this Settlement Agreement, the “Class Period” shall mean the time period of August 12, 2015 through September 2, 2020 or the date the Court grants preliminary approval, whichever is earlier.

The Parties agree that certification for purposes of this Settlement Agreement 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. **Amendment to Complaint.** In connection with the mediation, Defendant provided Plaintiff with time punch and pay data and other information relating to the members of the Settlement Class. That information was analyzed by Plaintiff, and the Parties negotiated this Settlement with the intention of resolving not only the claims asserted in the Complaint, but also

claims related to the failure to provide accurate, itemized wage statements under Labor Code section 226 and claims under the Private Attorneys' General Act of 2004 ("PAGA") that could have been premised on the facts, claims, causes of action or legal theories described in the operative Complaint and Labor Code section 226. In light of the Settlement and as a condition thereof, the Parties stipulate for purposes of effectuating the terms of the Settlement only, as part of this Settlement and subject to Court approval, the filing by Plaintiff of a First Amended Complaint which adds a claim for failure to provide accurate, itemized wage statements under Labor Code section 226 and claims under the Private Attorneys' General Act of 2004 ("PAGA") that could have been premised on the facts, claims, causes of action or legal theories described in the operative Complaint and Labor Code section 226 and such claim will be resolved as part of and in conjunction with this Settlement. The Proposed First Amended Complaint is attached to this Settlement as Exhibit A;

3. **Data Verification.** In connection with the mediation, Defendant provided Plaintiff with time punch and pay data and other information relating to the members of the Settlement Class. Defendant hereby confirms and verifies the following, upon which the Parties relied in reaching this Settlement, is accurate as of the date of mediation: there are 46 Settlement Class member, 7,912 workweeks for the time period August 12, 2015 through May 5, 2020, 1,442 pay periods for the time period August 12, 2018 through May 5, 2020, and the average hourly rate of pay for members of the Settlement Class is \$14.75.

4. **Release by Settlement Class Members and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who timely and properly submit a Request for Exclusion as set forth below) will fully and forever completely release and discharge Boerner Motor, and all of its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the "Released Parties"), as follows:

- A. Settlement Class Members' Release: Settlement Class members and Plaintiff will release all claims, demands, rights, liabilities and causes of action that were pled in any of the Complaints in the Action, or which could have been pled in any of the Complaints in the Action based on the factual allegations therein, that arose during the Class Period with respect to the following claims: (a) failure to provide meal periods, or premium pay for non-compliant meal periods; (b) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (c) failure to provide accurate, itemized wage statements; (d) failure to timely pay wages upon separation of employment; (e) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above; and (f) a claim under California Labor Code Private Attorneys General Act of 2004 that could have been premised on the facts, claims, causes of action or legal theories described above (collectively, the "Released Claims").
- B. The time period for the release of the Released Claims shall be the same time period as the Class Period.

- C. In light of the Class Representative Service Award, Plaintiff agrees 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 for the time period August 16, 2015 through the date Plaintiff signs this Agreement. Notwithstanding the foregoing, Plaintiff understands that this release includes unknown claims, which includes waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which 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.

- D. Notwithstanding the above, nor anything else in this Settlement, the waiver and release in this Settlement does not apply to (i) those rights that as a matter of law cannot be waived, including, but not limited to, workers' compensation claims, pending or otherwise; and (ii) rights or claims arising out of this Settlement.
- E. The releases identified herein will be effective on the date the Settlement is fully funded by Defendant.

5. **Gross Settlement Amount.** As consideration, Defendant agrees to pay a "Gross Settlement Amount" of Two Hundred Sixty-Two Thousand Dollars and Zero Cents (\$262,000.00) 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. All administrative costs shall be paid from the Gross Settlement Amount.
- B. With the exception of the Settlement Administrator's fees, if required by the Settlement Administrator, the Gross Settlement Amount shall be deposited by Boerner Motor into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members. Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator within thirty (30) calendar days after the "Effective Date" which is defined as the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed.
- C. This is a non-reversionary settlement. The Gross Settlement Amount includes:
- (1) All payments (including interest) to the Settlement Class members;

- (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Six Thousand Two Hundred Fifty Dollars and Zero Cents (\$6,250.00);
- (3) Up to Six Thousand Five Hundred Dollars and Zero Cents (\$6,500.00) for Plaintiff's Class Representative Service Award, in recognition of her contributions to the Action, and her service to the Settlement Class. Even in the event that the Court reduces or does not approve the requested Class Representative Service Award, Plaintiff shall not have the right to revoke this Settlement Agreement, and this Settlement shall remain binding;
- (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 Twenty-Two Thousand Dollars and Zero Cents (\$22,000.00). 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 Agreement, and it will remain binding; and
- (5) Ten Thousand Dollars and Zero Cents (\$10,000.00) 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 Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining twenty-five percent (25%), or Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00), will be payable to certain Settlement Class members as the "PAGA Amount," as described below.

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

6. **Payments to the Settlement Class.** Settlement 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 Service Award, the Settlement Administrator's fees and expenses for administration, and the amount designated as PAGA civil penalties payable to the LWDA. The remaining amount shall be known as the "Net Settlement Amount."
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Settlement Award based on the following formula:
 - i. Eighty-Five Percent (85%) of the Net Settlement Amount, not including the PAGA Amount payable to Settlement Class members as described above,

shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked during the Class Period, the numerator of which is the Settlement Class member's total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all Settlement Class members who worked during the Class Period.

- ii. Wage Statement Amount: Ten Percent (10%) of the Net Settlement Amount, not including the PAGA Amount payable to Settlement Class members as described above, shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Boerner Motor at any time from August 12, 2018 through September 2, 2020 or preliminary approval, whichever is earlier, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks worked during the period August 12, 2018 through September 2, 2020 or preliminary approval, whichever is earlier, the numerator of which is the Settlement Class member's gross number of workweeks worked during this time period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during this time period.
- iii. Waiting Time Penalty Amount: Five Percent (5%) of the Net Settlement Amount, not including the PAGA Amount payable to Settlement Class members as described above, shall be designated as the "Waiting Time Penalty Amount." Each participating Settlement Class member who was separated from employment with Boerner Motor at any time between August 12, 2016 through September 2, 2020 or preliminary approval, whichever is earlier, shall receive a portion of the Waiting Time Penalty Amount. The Waiting Time Penalty amount shall be divided equally between all Settlement Class members who were separated from their employment between August 12, 2016 through September 2, 2020 or preliminary approval, whichever is earlier.
- iv. PAGA Amount: Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each participating Settlement Class member who was employed by Boerner Motor at any time from August 12, 2018 through September 2, 2020 or preliminary approval, whichever is earlier, shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during this time period. Each Settlement Class member who worked during this time period shall receive a portion of the PAGA Amount, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the participating Settlement Class members' number of workweeks worked during this time period, and the denominator of which is the total number of workweeks

worked by all Settlement Class members who do not opt out of the Settlement during this time period.

- C. Within ten (10) calendar days following Boerner Motor'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 the Parties for review and approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Boerner Motor's counsel.
- D. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Sixty Seven percent (67%) as penalties and interest; and Thirty-Three percent (33%) as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Each Settlement Class member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. Notwithstanding the treatment of the payments to each Settlement 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 member of the Settlement Class who receives a Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing will escheat to the California Secretary of State- Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class member.
- F. Neither Plaintiff nor Boerner Motor 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.

7. **Attorneys' Fees and Costs.** Boerner Motor 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 Eighty-Seven Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$87,333.33). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Twenty-Two Thousand Dollars and Zero Cents (\$22,000.00) 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 allowed by the Court.

8. **Class Representative Service Award.** Boerner Motor will not object to a request for a Class Representative Service Award of up to Six Thousand Five Hundred Dollars and Zero Cents (\$6,500.00) to Plaintiff for her time and risk in prosecuting this case, and her service to the Settlement Class. This award will be in addition to Plaintiff's Settlement Award as a Settlement 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 Service Award, Plaintiff shall not have the right to revoke this Settlement, and it will remain binding.

9. **Settlement Administrator.** Boerner Motor will not object the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff's seeking permission to pay up to Six Thousand Two Hundred Fifty Dollars and Zero Cents (\$6,250.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Boerner Motor's share of taxes payable on the wages, which shall be paid by Boerner Motor separate and apart from the Gross Settlement Amount, 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 participating Settlement Class members.

10. **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 of Haines Law Group, APC and Scott M. Lidman, Milan Moore and Elizabeth Nguyen of Lidman Law, APC as Class Counsel;
- C. Appointing Patricia Hernandez as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Permitting the filing of the Proposed First Amended Complaint attached to this Settlement as Exhibit A;
- F. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- G. Approving the form and content of the Notice Packet (which is comprised of the Notice of Pendency of Class Action and Settlement and Notice of Settlement Award, drafts of which are attached collectively hereto as Exhibit B), and directing the mailing of same; and
- H. Scheduling a Final Approval hearing.

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

- A. Within fifteen (15) calendar days after entry of an order preliminarily approving this Agreement, Boerner Motor will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, positions held, the dates of employment and the number of workweeks worked by each Settlement 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 Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet in both English and Spanish to each Settlement 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 Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within forty-five (45) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
 - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement 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 a Request for Exclusion not containing a Class Member's telephone number and/or last four digits of the Social Security 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 Settlement 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.
- D. Objections. Members of the Settlement Class 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 Boerner Motor's counsel, as well as file all such objections with the Court). Boerner Motor's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any written objection must: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement 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. Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing irrespective of whether they submitted any written objections.

- E. Notice of Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award as well as all of the information that was used from Boerner Motor's records in order to calculate the Settlement Award, including the Settlement Class member's number of workweeks worked during the Class Period, the number of workweeks worked during the time period of August 12, 2018 through September 2, 2020 or the date of preliminary approval, whichever is earlier. Settlement Class members will have the opportunity, should they disagree with Boerner Motor's records regarding the information stated in the Notice of Settlement Award, 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 Settlement 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 three (3) business days of receiving the returned Notice Packet. If an updated mailing address is identified before the Response Deadline, the Settlement Administrator shall resend the Notice Packet to the Settlement 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 Settlement Class member. It will be presumed that, if an envelope so mailed has not been returned within twenty (20) days of the mailing, the Settlement Class member received the Notice Packet. Settlement 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, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Boerner Motor's Counsel to provide notice of the proposed settlement.

12. **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 Service Award, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

13. **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. In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Boerner Motor and/or the Released Parties, and it shall not be construed as or deemed to be evidence of, or an admission or concession that the any Settling Class member has suffered any damage. 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.

14. **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 Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. However, 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. Class Counsel may also include a general description of the Settlement on their respective websites but may not include the name(s) of any of the Parties, or the case name or case number of the Action.

15. **Legal Developments.** The Parties agree that Plaintiff will submit to the Court a motion for preliminary approval of this Settlement containing all of the terms and conditions contained herein notwithstanding any new legal developments regarding the Released Claims.

16. **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.

17. **Attorneys' Fees:** In the event of any dispute arising out of the interpretation, performance, or breach of any provision of this Settlement Agreement, the prevailing party in such dispute(s) shall be entitled to recover her and/or its reasonable attorneys' fees and costs incurred arising from such dispute.

18. **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: Robert A. Cutbirth and Joseph S. Suarez, Freeman Mathis & Gary, LLP, 3030 Old Ranch Parkway, Suite 280, Seal Beach, CA 92130; rcutbirth@fmglaw.com; jsuarez@fmglaw.com;

if to Plaintiff: Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC, 2155 Campus Drive, Suite 150 El Segundo, California 90245; slidman@lidmanlaw.com and enguyen@lidmanlaw.com

Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245; phaines@haineslawgroup.com

19. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

20. **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.

21. **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.

DATED: DEFENDANT FRED M. BOERNER MOTOR CO.

By: _____

Its: _____

16. **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.

17. **Attorneys' Fees:** In the event of any dispute arising out of the interpretation, performance, or breach of any provision of this Settlement Agreement, the prevailing party in such dispute(s) shall be entitled to recover her and/or its reasonable attorneys' fees and costs incurred arising from such dispute.

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if to Defendant: Robert A. Cutbirth and Joseph S. Suarez, Freeman Mathis & Gary, LLP, 3030 Old Ranch Parkway, Suite 280, Seal Beach, CA 92130; rcutbirth@fmglaw.com; jsuarez@fmglaw.com;

if to Plaintiff: Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC, 2155 Campus Drive, Suite 150 El Segundo, California 90245; slidman@lidmanlaw.com and enguyen@lidmanlaw.com

Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245; phaines@haineslawgroup.com

19. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

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21. **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.

DATED: July 14, 2020

DEFENDANT FRED M. BOERNER MOTOR CO.

By: Paul Defner

Its: CFO

DATED: Jun 30, 2020

PLAINTIFF PATRICIA HERNANDEZ

By: 
Patricia M Hernandez (Jun 30, 2020 14:10 PDT)
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED:

FREEMAN MATHIS & GARY, LLP

By: _____
Robert A. Cutbirth
Joseph S Suarez
Attorneys for Defendant FRED M. BOERNER
MOTOR CO.

DATED: July 14, 2020

HAINES LAW GROUP, APC

By: 
Paul K. Haines
Attorneys for Plaintiff Patricia Hernandez

DATED: July 14, 2020

LIDMAN LAW, APC

By: 
Scott M. Lidman
Attorneys for Plaintiff Patricia Hernandez

DATED:

PLAINTIFF PATRICIA HERNANDEZ

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: 7/14/2020

FREEMAN MATHIS & GARY, LLP

By:  _____
Robert A. Cutbirth
Joseph S Suarez
Attorneys for Defendant FRED M. BOERNER
MOTOR CO.

DATED:

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff Patricia Hernandez

DATED:

LIDMAN LAW, APC

By: _____
Scott M. Lidman
Attorneys for Plaintiff Patricia Hernandez

EXHIBIT A

EXHIBIT A

LIDMAN LAW, APC

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Milan Moore (SBN 308095)
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Fax: (424) 292-2355

Attorneys for Plaintiff
PATRICIA HERNANDEZ

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

PATRICIA HERNANDEZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

FRED M. BOERNER MOTOR CO., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 19STCV28136

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) FAILURE TO PROVIDE MEAL PERIODS (LABOR CODE §§ 226.7, 512);**
- (2) FAILURE TO AUTHORIZE AND PERMIT REST PERIODS (LABOR CODE §§ 226.7, 516);**
- (3) FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS (LABOR CODE § 226 *et seq.*);**
- (4) FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION (LABOR CODE §§ 201-203);**
- (5) UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*); and**

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(6) CIVIL PENALTIES UNDER THE
LABOR CODE PRIVATE
ATTORNEYS GENERAL ACTION
OF 2004 (LABOR CODE §§ 2698 *et*
seq.)

DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE

1 Plaintiff Patricia Hernandez (“Plaintiff”), on behalf of herself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint (“FAC”)
3 against Fred M. Boerner Motor Co., a California corporation, and DOES 1 to 100, inclusive
4 (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 FAC for recovery of unpaid wages and penalties under California Business & Professions Code
8 § 17200 *et. seq.*, Labor Code §§ 201-203, 204, 226, 226.7, 512, 516, 1174, 2698 *et seq.*, and
9 Industrial Welfare Commission Wage Order 7 (“Wage Order 7”), in addition to seeking
10 declaratory relief and restitution. This FAC is brought pursuant to California Code of Civil
11 Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California Labor
12 Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
15 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
16 County of Los Angeles. Defendants own, maintain offices, transact business, have agent(s)
17 within the County of, among others, Los Angeles, and/or otherwise are found within the County
18 of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of service
19 of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the lawsuit in this action and within the statute of limitations periods applicable to
24 each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-203, 204, 226, 226.7, 512, 516, 1174, and 2698 *et seq.*, California Business & Professions
28 Code § 17200 *et seq.* (“Unfair Competition Law”); and Wage Order 7, which includes the industry

1 in which Plaintiff worked for Defendants.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
3 years preceding the filing of the lawsuit and continuing to the present, Defendants did (and
4 continue to do) business by operating for the purpose of purchasing, selling, or distributing goods
5 or commodities in either wholesale or retail. Defendants employed Plaintiff and other, similarly-
6 situated non-exempt employees within Los Angeles County and the state of California and,
7 therefore, were (and are) doing business in Los Angeles County and the State of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,
9 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 amend this FAC when such true names and capacities are discovered. Plaintiff is informed, and
12 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
14 and proximately caused Plaintiff and the Classes (as defined in Paragraph 16) to be subject to the
15 unlawful employment practices, wrongs, injuries and damages complained of herein.

16 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
17 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

18 7. At all times herein mentioned, each of said Defendants participated in the doing
19 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
20 Defendants, and each of them, were the agents, servants, and employees of each and every one of
21 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
22 were acting within the course and scope of said agency and employment. Defendants, and each
23 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
24 omissions complained of herein.

25 8. At all times mentioned herein, Defendants, and each of them, were members of
26 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
27 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
28 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all

1 members of the Classes.

2 **GENERAL FACTUAL ALLEGATIONS**

3 9. Plaintiff was employed by Defendants as a non-exempt employee from
4 approximately July 2017 until approximately September 2017 at which time she was terminated.
5 Plaintiff worked at Defendants' Huntington Park, California location.

6 10. During her employment with Defendants, Plaintiff typically was scheduled to
7 work from approximately 8:00 a.m. until approximately 4:00 p.m. Plaintiff's job title was
8 Customer Service Representative.

9 11. Throughout her employment, Plaintiff was not provided all required meal periods
10 due to Defendants' meal period policies and practices which fail to provide uninterrupted, duty-
11 free 30-minute meal periods when employees work in excess of 5.0 hours in a day. Due to
12 Defendants' work demands, Plaintiff was typically not provided an uninterrupted meal period as
13 she was often asked to perform tasks during a given meal period. Defendants imposed such a
14 high demand on Plaintiff and other non-exempt employees, that Plaintiff and other employees
15 would often have to wait until there was a lull in assignments before being permitted to take a
16 meal period. Furthermore, would often not be permitted to take her lunch until 1:30 p.m. which
17 was after the end of her 5th hour of work. Thus, Plaintiff both had her meal periods often
18 interrupted and also often was not provided with a timely meal period, both of which violate
19 California law.

20 12. Although Plaintiff was not provided with all legally-compliant meal periods to
21 which she was entitled, Defendants failed to compensate Plaintiff with the required meal period
22 premium for each workday in which she experienced a meal period violation as mandated by
23 Labor Code § 226.7. Upon information and belief during at least a portion of the class period,
24 Defendants maintained no payroll code or other mechanism for the payment of meal period
25 premium payments under Labor Code § 226.7 in the event that a legally compliant meal period
26 was not provided to Plaintiff and their other non-exempt employees.

27 13. Plaintiff was not authorized and permitted to take all legally required paid rest
28 periods due to Defendants' unlawful rest period policies and practices. Defendants' rest period

1 policies and practices fail to authorize and permit paid net 10-minute rest periods for every four
2 hours worked, *or major fraction thereof*. It was a regular occurrence for rest periods not to be
3 authorized and permitted due to Defendants' daily work demands. Thus, Plaintiff did not receive
4 her full, uninterrupted net 10-minute rest breaks in violation of California law.

5 14. Despite Plaintiff not being authorized and permitted to take all legally-compliant
6 rest periods to which she was entitled, Defendants failed to compensate Plaintiff with the required
7 rest period premium for each workday in which she experienced a rest period violation as
8 mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion
9 of the class period, Defendants maintained no payroll code or other mechanism for the payment
10 of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant
11 rest period was not provided to their non-exempt employees.

12 15. As a result of Defendants' failure to pay all meal and rest period premium wages,
13 Defendants failed to pay all wages owed to Plaintiff upon her separation of employment from
14 Defendants. As a further result of Defendants' failure to pay all meal and rest period premium
15 wages, Defendants maintained inaccurate payroll records and insured inaccurate wage statements
16 to Plaintiff.

17 **CLASS ACTION ALLEGATIONS**

18 16. **Class Definitions:** Plaintiff brings this action on behalf of herself and the
19 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 20 a) The Meal Period Class consists of all of Defendants' current and former non-
21 exempt employees who worked at least one shift in excess of 5.0 hours during the
22 four years immediately preceding the filing of the lawsuit through the present.
- 23 b) The Rest Period Class consists of all of Defendants' current and former non-
24 exempt employees in California who worked at least one shift of 3.5 hours or more
25 during the four years immediately preceding the filing of the lawsuit through the
26 present.

1 c) The Wage Statement Class consists of all of Defendants' current and former non-
2 exempt employees in the Meal Period Class and/or Rest Period Class, during the
3 one year immediately preceding the filing of the lawsuit through the present.

4 d) The Waiting Time Penalty Class consists of Defendants' formerly employed
5 members of the Meal Period Class and/or Rest Period Class in California, during
6 the three years immediately preceding the filing of the lawsuit through the present.

7 e) The UCL Class consists of members of the: (i) Meal Period Class; (ii) Rest Period
8 Class; (iii) Wage Statement Class; and (iv) Waiting Time Class, during the four
9 years immediately preceding the filing of the lawsuit through the present.

10 17. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court,
11 to amend or modify the description of the various classes with greater specificity or further
12 division into subclasses or limitation to particular issues.

13 18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
14 joinder of all members would be unfeasible and not practicable. The membership of the Classes
15 is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes could
16 exceed one-hundred (100) individuals. The identity of such membership is readily ascertainable
17 via inspection of Defendants' employment records.

18 19. **Common Questions of Law and Fact Predominate/Well Defined Community**
19 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
20 situated employees, which predominate over questions affecting only individual members. Those
21 common questions include, without limitation:

22 i. Whether Defendants provided all legally compliant meal periods to members of
23 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

24 ii. Whether Defendants authorized and permitted all legally compliant rest periods to
25 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

26 iii. Whether Defendants furnished legally compliant wage statements to members of
27 the Wage Statement Class pursuant to Labor Code § 226;

28 iv. Whether Defendants' policies and/or practices for the timing and amount of

1 payment of final wages to members of the Waiting Time Class at the time of their
2 separation of employment were lawful; and

3 v. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive
4 business practices by and through the wage and hour policies and practices
5 described above, and whether as a result Defendants owe the classes restitution.

6 20. **Predominance of Common Questions:** Common questions of law and fact
7 predominate over questions that affect only individual members of the Classes. The common
8 questions of law set forth above are numerous and substantial and stem from Defendants' policies
9 and/or practices applicable to each individual class member, such as Defendants' uniform meal
10 and/or rest period policies and practices. As such, the common questions predominate over
11 individual questions concerning each individual class member's showing as to their eligibility for
12 recovery or as to the amount of their damages.

13 21. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
14 Plaintiff was employed by Defendants as a non-exempt employee in California during the
15 statute(s) of limitations period applicable to each cause of action pled in the FAC. As alleged
16 herein, Plaintiff, like the members of the Classes, was not provided all required meal periods, was
17 not authorized and permitted to take all required rest periods, did not receive period premium
18 wages when she was not provided compliant meal and/or rest periods, was not provided with all
19 premium wages due at the time of separation, and was not provided with accurate, itemized wage
20 statements.

21 22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
22 to represent fairly and adequately the interests of the members of the Classes. Moreover,
23 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
24 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
25 and-hour class actions in state and federal courts in the past and are committed to vigorously
26 prosecuting this action on behalf of the members of the Classes.

27 23. **Superiority:** The California Labor Code is broadly remedial in nature and serves
28 an important public interest in establishing minimum working conditions and standards in

California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 16 are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(AGAINST ALL DEFENDANTS)

24. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 failed in their affirmative obligation to provide all of their non-exempt employees in California,
2 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
3 in accordance with the mandates of the California Labor Code and Wage Order 7. Despite
4 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
5 of the Meal Period Class at their respective regular rates of compensation, in accordance with
6 California Labor Code §§ 226.7, and 512.

7 26. As a result, Defendants are responsible for paying premium compensation for meal
8 period violations including interest thereon, as well as statutory penalties, civil penalties, and
9 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 7, California Code of
10 Civil Procedure § 1021.5 and Civil Code §§ 3287(b) and 3289.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

13 **(AGAINST ALL DEFENDANTS)**

14 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 28. The Wage Order and California Labor Code §§ 226.7 and 516 establish the right
16 of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes
17 net rest time for each four (4) hour period worked, or major fraction thereof.

18 29. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
19 of the Rest Period Class to take all required rest periods.

20 30. The foregoing violations create an entitlement to recovery by Plaintiff and
21 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
22 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
23 according to California Labor Code §§ 226.7, 516, 558, Wage Order 7, California Code of Civil
24 Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

25 **THIRD CAUSE OF ACTION**

26 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

27 **(AGAINST ALL DEFENDANTS)**

28 31. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though

1 fully set forth herein.

2 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
4 and the Wage Statement Class Members with accurate, itemized wage statements that included
5 among other requirements, accurate total gross wages earned, meal and rest period premiums, and
6 total net wages earned in violation of Labor Code § 226 *et seq.*

7 33. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
8 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
9 failures led to, among other things, accurate total gross wages earned, meal and rest period
10 premiums, and total net wages earned in violation of Labor Code § 226 *et seq.*

11 34. Defendants' failures created an entitlement to Plaintiff and members of the Wage
12 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
13 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit
14 pursuant to Labor Code § 226 *et seq.*

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PAY ALL WAGES UPON TERMINATION**

17 **(AGAINST ALL DEFENDANTS)**

18 35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 36. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
20 an employer to pay all wages immediately at the time of separation of employment in the event
21 the employer discharges the employee or the employee provides at least 72 hours of notice of
22 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
23 to quit, said employee's wages become due and payable not later than 72 hours upon said
24 employee's last date of employment.

25 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 failed to timely pay Plaintiff and members of the Waiting Time Penalty Class all final wages due
27 to them at their separation from employment, including, meal and rest period premium wages.

28 38. Further, Plaintiff is informed and believes, and based thereon alleges, that as a

1 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
2 of the Waiting Time Penalty Class all earned wages at the end of employment in a timely manner
3 pursuant to the requirements of Labor Code §§ 201-203.

4 39. Defendants' failure to pay all final wages was willful within the meaning of Labor
5 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
6 Time Penalty Class their earned wages upon separation from employment results in a continued
7 payment of wages up to thirty days from the time the wages were due.

8 40. Therefore, Plaintiff and members of the Waiting Time Penalty Class are entitled
9 to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

10 **FIFTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 **(AGAINST ALL DEFENDANTS)**

13 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 42. Defendants have engaged and continue to engage in unfair and/or unlawful
15 business practices in California in violation of California Business and Professions Code § 17200
16 *et seq.*, by failing to provide all required meal periods, failing to authorize and permit all required
17 rest periods, and failing to pay rest period premium wage payments.

18 43. Defendants' utilization of these unfair and/or unlawful business practices deprived
19 Plaintiff and continues to deprive members of the Classes of compensation to which they are
20 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
21 over Defendants' competitors who have been and/or are currently employing workers and
22 attempting to do so in honest compliance with applicable wage and hour laws.

23 44. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
24 herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of
25 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
26 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

27 45. The acts complained of herein occurred within the last four years immediately
28 preceding the filing of the lawsuit in this action.

1 46. Plaintiff was compelled to retain the services of counsel to file this court action to
2 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf
3 of Defendants' current non-exempt employees, and to enforce important rights affecting the
4 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
5 which she is entitled to recover under Code of Civil Procedure § 1021.5.

6 **SIXTH CAUSE OF ACTION**

7 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

8 **(AGAINST ALL DEFENDANTS)**

9 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 48. Defendants have committed several Labor Code violations against Plaintiff and
11 other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code
12 § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this
13 representative action against Defendants to recover the civil penalties due to Plaintiff, the other
14 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
15 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
16 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
17 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
18 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for
19 each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3)
20 \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor
21 Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00
22 for each subsequent violation per employee per pay period for those violations of the Labor Code
23 for which no civil penalty is specifically provided, based on the following Labor Code violations:

24 a) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide
25 all legally required meal periods and failing to pay meal period premiums to
26 Plaintiff and other aggrieved employees;

27 b) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize
28 and permit all legally required rest periods and failing to pay rest period

premiums to Plaintiff and other aggrieved employees;

c) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements;

d) Defendants violated Labor Code §§ 201-203 by failing to timely pay Plaintiff and other aggrieved employees all wages upon termination of employment;

e) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees; and

f) Defendants violated Labor Code § 204 by failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month.

49. On May 18, 2020, Plaintiff noticed Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 48 (a)-(f). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Labor Code Private Attorneys General Act with respect to these violations.

50. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;

1 4. Upon the First Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

3 5. Upon the Second Cause of Action, for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

5 6. Upon the Third Cause of Action, for statutory wage statement penalties pursuant
6 to Labor Code § 226 *et seq.*;

7 7. Upon the Fourth Cause of Action, for statutory waiting time penalties pursuant to
8 Labor Code § 203;

9 8. Upon the Fifth Cause of Action, for restitution to Plaintiff and members of the
10 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
11 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
12 *seq.*;

13 9. Upon the Sixth Cause of Action, for civil penalties to Plaintiff, other aggrieved
14 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
15 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
16 to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation
17 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
18 unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent
19 violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial
20 violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee
21 per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent
22 violation per employee per pay period for those violations of the Labor Code for which no civil
23 penalty is specifically provided, based on the Labor Code violations cited in Paragraph 48(a)-(f)
24 above;

25 10. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
26 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

27 11. For such other and further relief as the Court may deem just and proper.
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1 Dated: _____, 2020

Respectfully submitted,

LIDMAN LAW, APC

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4 By: _____

5 Scott M. Lidman
6 Attorneys for Plaintiff
7 PATRICIA HERNANDEZ

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

10 Dated: _____, 2020

Respectfully submitted,

LIDMAN LAW, APC

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12 By: _____

13 Scott M. Lidman
14 Attorneys for Plaintiff
15 PATRICIA HERNANDEZ
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EXHIBIT B

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

PATRICIA HERNANDEZ,

Plaintiff,

vs.

FRED M. BOERNER MOTOR CO., a California
corporation; and Does 1 through 100,

Defendants.

Case No. 19STCV28136

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All current and former non-exempt employees who have worked for Defendant Fred M. Boerner Motor Co. ("Boerner Motor" or "Defendant") in California during the time period of August 12, 2015 through [September 2, 2020 or order granting preliminary approval, whichever is earlier]. Collectively, these employees will be referred to as "Settlement Class members."

**PLEASE READ THIS NOTICE 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 class action settlement (the "Settlement") in *Patricia Hernandez v. Fred M. Boerner Motor Co.*, Case No. 19STCV28136 (the "Lawsuit"). 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. Boerner Motor's records show that you were employed at Boerner Motor as a non-exempt employee in California between August 16, 2015 through [September 2, 2020 or order granting preliminary approval, whichever is earlier] (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 Lawsuit, 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 by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Patricia Hernandez ("Plaintiff") brought this Lawsuit against Boerner Motor, seeking to assert claims on behalf of a class of current and former non-exempt employees who worked for Boerner Motor in California at any time on or after August 12, 2015. Plaintiff Patricia Hernandez is known as the "Class Representative," and her attorneys, who also represent the interests of all Settlement Class members, are known as "Class Counsel."

The Lawsuit alleges that Boerner Motor failed to provide to Settlement Class members all required meal and rest periods, and failed to provide Settlement Class members with itemized wage statements in compliance with California law. The Lawsuit also alleges that Boerner Motor failed to timely pay all wages owed to Settlement Class members upon their separation of employment from Boerner Motor. As a result of the foregoing alleged violations, Plaintiff also alleges that Boerner Motor failed to provide accurate, itemized wage statements, engaged in unfair business practices and is liable for civil penalties under the Labor Code Private Attorney General Act.

Boerner Motor denies that it has done anything wrong. Boerner Motor further denies that it owes Settlement

Class members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Boerner Motor, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with its business operations, Boerner Motor has concluded that it is in its best interests and the interests of Settlement Class members to settle the Lawsuit on the terms summarized in this Notice. After Boerner Motor 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 Boerner Motor, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

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

Who are the Attorneys?

Attorneys for the Plaintiff / Settlement Class Members: LIDMAN LAW, APC Scott M. Lidman slidman@lidmanlaw.com Elizabeth Nguyen enguyen@lidmanlaw.com Milan Moore mmoore@lidmanlaw.com 2155 Campus Drive, Suite 150 El Segundo, California 90245 Tel: (424) 322-4772 Fax: (424) 322-4775 www.lidmanlaw.com HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	Attorneys for Defendant Fred M. Boerner Motor Co.: FREEMAN MATHIS & GARY, LLP Robert A. Cutbirth rcutbirth@fmglaw.com Joseph S. Suarez jsuarez@fmglaw.com Old Ranch Parkway, Suite 280, Seal Beach, CA 92130 www.fmglaw.com
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What are the terms of the Settlement?

On [INSERT DATE OF PRELIMINARY APPROVAL], the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees who worked for Boerner Motor in California from August 12, 2015 through [September 2, 2020 or date of preliminary approval, whichever is earlier]. Settlement 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 Boerner Motor as described below.

Boerner Motor has agreed to pay \$262,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, which includes payments to Settlement Class members, attorneys’ fees and expenses, payment to the Labor Workforce Development Agency (“LWDA”), settlement administration costs, the Class Representative’s Service Award and monies to be paid to the LWDA. Boerner Motor’s share of payroll taxes associated with any wage payments to Settlement Class members shall be paid by Boerner Motor separately from, and in addition to, the Gross Settlement Amount.

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

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 \$6,250.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement 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. Settlement Class members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount, which is estimated to be \$87,333.33, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement in an amount not to exceed \$22,000.00 for verified costs Class Counsel incurred in connection with the Lawsuit.

Service Award to Class Representative. Class Counsel will ask the Court to award the Class Representative a service award in the amount not to exceed \$6,500.00, to compensate her for her service and extra work provided on behalf of the Settlement Class members.

LWDA Payment. Class Counsel will ask the Court to approve a payment in the total amount of \$10,000.00 as and for alleged civil penalties, payable pursuant to the California Labor Code Private Attorney General Act (“PAGA”). Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) will be payable to the LWDA, and the remaining twenty-five percent (25%), or Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00), will be payable to certain Settlement Class members as the “PAGA Amount,” as described below.

Calculation of Individual Settlement Class Members’ Settlement Award. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount (“NSA”), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated at approximately \$129,916.70, to be shared among an up to 46 estimated Settlement Class members. The NSA will be divided as follows:

- (i) Eighty-Five Percent (85%) of the Net Settlement Fund shall be allocated to Settlement Class Members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked during the Class Period, the numerator of which is the Settlement Class Member’s total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all Settlement Class Members who worked during the Class Period.
- (ii) Ten Percent (10%) of the Net Settlement Amount shall be designated as the “Wage Statement Amount.” Each participating Settlement Class member who was employed by Defendant at any time from August 12, 2018 to [September 2, 2020 or the date the Court enters the order granting preliminary approval, whichever is earlier], shall receive a portion of the Wage Statement Amount proportionate to the number of Workweeks worked during

the period August 12, 2018 to [September 2, 2020 or the date the Court enters the order granting preliminary approval, whichever is earlier], the numerator of which is the Settlement Class member's gross number of Workweeks worked during this time period, and the denominator of which is the total number of Workweeks worked by all participating Settlement Class members during this time period.

- (iii) Five Percent (5%) of the Net Settlement Fund shall be designated as the "Waiting Time Amount." Each participating Settlement Class member whose employment with Defendant was separated at any time from August 12, 2016 until [September 2, 2020 or the date the Court enters the order granting preliminary approval, whichever is earlier], shall receive a portion of the Waiting Time Amount. Each participating Settlement Class member who was separated from employment with Boerner Motor at any time between August 12, 2016 through September 2, 2020 or preliminary approval, whichever is earlier, shall receive a portion of the Waiting Time Penalty Amount. The Waiting Time Penalty amount shall be divided equally among all Settlement Class members who were separated from their employment between August 12, 2016 through September 2, 2020 or preliminary approval, whichever is earlier.

In addition, Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each participating Settlement Class member who was employed by Defendant at any time from August 12, 2018 to [September 2, 2020 or the date the Court enters the order granting preliminary approval, whichever is earlier], shall receive a portion of the PAGA Amount proportionate to the number of Workweeks that he or she worked during the period of August 12, 2018 to [September 2, 2020 or the date the Court enters the order granting preliminary approval, whichever is earlier], and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the participating Settlement Class members' number of Workweeks worked during the time period from August 12, 2018 to [September 2, 2020 or the date the Court enters the order granting preliminary approval, whichever is earlier], and the denominator of which is the total number of Workweeks worked by all Settlement Class members who do not opt out of the Settlement during the time period of August 12, 2018 to [September 2, 2020 or the date the Court enters the order granting preliminary approval, whichever is earlier].

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

Payment by Boerner Motor of Gross Settlement Amount. The Gross Settlement Amount shall be paid by Boerner Motor with the Settlement Administrator within thirty (30) calendar days after the "Effective Date" which is defined as the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed.

Within ten (10) calendar days following Boerner Motor's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Individual Settlement Award amounts and provide the same to the Parties' counsel for review and approval. Within seven (7) calendar days of approval by the Parties' counsel, the Settlement Administrator will prepare and mail Individual Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members.

Allocation and Taxes. For tax purposes, each Settlement Award shall be allocated as follows: sixty-seven percent (67%) as penalties and interest; and thirty-three percent (33%) as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Settlement Class members are responsible for the proper income tax treatment of the Individual Settlement Awards. The Settlement Administrator, Boerner Motor and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement 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, the Settlement Class, and each Settlement Class member who has not submitted a timely and valid Request for Exclusion, will release Boerner Motor, its past and present officers, directors, shareholders, unit holders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the “Released Parties”), from all claims, demands, rights, liabilities and causes of action that were pled in any of the Complaints in the Action, or which could have been pled in any of the Complaints in the Action based on the factual allegations therein, that arose during the Class Period, including: (a) any and all claims for missed or allegedly non-compliant meal periods or non-payment of meal period premiums; (b) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (c) any and all claims for failure to provide timely, complete or accurate wage statements; (d) any and all claims for failure to pay final wages upon separation from employment; (e) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above; (f) a claim under California Labor Code Private Attorneys General Act of 2004 that could have been premised on the facts, claims, causes of action or legal theories described above.

The time period of the Release shall be the same time as the Class Period. The release is null and void if Defendant fails to fully fund the Settlement.

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 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 workweeks you worked during the Class Period (as explained above), and as stated in the accompanying Notice of Settlement Award. 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 workweeks you worked during the Class Period, whether you have worked between August 12, 2015 and [September 2, 2020 or preliminary approval, whichever is earlier]. The information contained in Boerner Motor’s records regarding all of these factors, along with your estimated Settlement Award, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator’s decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written “Request for Exclusion from the Class Action Settlement” letter or card postmarked no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, and your signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE HERNANDEZ V. FRED M. BOERNER MOTOR CO. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who files a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. **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, you may mail a written objection to the Settlement Administrator. Your written objection must 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 must be in writing and must be postmarked on or before <<RESPONSE DEADLINE>>.

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department [] of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case, which *Patricia Hernandez v. Fred M. Boerner Motor Co.*, Los Angeles Superior Court Case No. 19STCV28136.

Any Class Member who elects to appear personally at the Court for any reason related to this Lawsuit must comply with the Court's social distancing and mandatory face covering requirements, as well as other orders related to COVID-19. All such rules and orders can be located at the Court's website: www.lacourt.org

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 Settlement 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 [] of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012. 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 Service Award to the Class Representative. The Final Approval Hearing may be postponed without further notice to Settlement Class members. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

The Court's final judgment will be posted on the Settlement Administrator's website (<http://.com>).

How can I get additional information?

This Notice is only a summary of the Lawsuit 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 Los Angeles County Superior Court, located at 111 North Hill Street, Los Angeles, California 90012, during regular court hours. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, FRED M. BOERNER MOTOR CO., 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.

BY ORDER OF THE COURT ENTERED ON <<PRELIM APPROVAL DATE>>.

NOTICE OF INDIVIDUAL SETTLEMENT AWARD

PATRICIA HERNANDEZ V. FRED M. BOERNER MOTOR CO.

LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 19STCV28136

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

(I) Please type or print your name:

(First, Middle, Last)

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

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Individual Settlement Award:

According to Fred M. Boerner Motor Co.'s records ("Boerner Motor"):

- (a) You were employed by Boerner Motor and worked a total of workweeks during the time period August 12, 2015 through September 2, 2020 or the date the Court enters the order granting preliminary approval, whichever is earlier.
- (b) You were employed by Boerner Motor and worked a total of workweeks during the time period August 12, 2018 through September 2, 2020 or the date the Court enters the order granting preliminary approval, whichever is earlier.
- (c) You [were/were not] separated from employment with Boerner Motor during the time period August 12, 2016 and through September 2, 2020 or the date the Court enters the order granting preliminary approval, whichever is earlier.

Based on the above, your Individual Settlement Award is estimated to be \$.

(IV) If you disagree with items (a) – (c) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Boerner Motor's records, Boerner Motor's records will control unless you are able to provide documentation that establishes that Boerner Motor's records are mistaken. If there is a dispute about whether Boerner Motor's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

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