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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, inclusive,

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 FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, CLASS REPRESENTATIVE'S
SERVICE AWARD, AND ATTORNEYS' FEES
AND COSTS**

Date: December 10, 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 to federal court; drafting and responding to written discovery; drafting and opposing discovery related

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

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

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

28 ¹ My work on this matter including proceedings not only in District Court, but also work before the United States Court of 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
27 of Appeal 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.
- 27 ▶ *Smith v. Werner Enterprises*, Case No. 15-cv-02978-RS, United States District
28 Court, Northern District of California, Honorable Richard Seeborg, presiding.

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

16 8. I have been appointed Class Counsel in *Guardado v. Wesley Allen, Inc.*, Case No.
17 BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl
18 presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court, County of Los
19 Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances, Inc.*, Case No. 30-
20 2017-00964213-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William
21 Claster presiding; *Hanke v. C&W Facility Services, Inc.*, Case No. CIVDS1814412, California Superior
22 Court, County of San Bernardino, Honorable Judge David Cohn presiding; *Molina v. Mader News, Inc.*,
23 Case No. BC685960, California Superior Court, County of Los Angeles, Honorable Judge Yvette M.
24 Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc.*, Case No. BC688326, California
25 Superior Court, County of Los Angeles, Honorable Judge William F. Highberger presiding; *Rodriguez*
26 *v. H.F. Cox, Inc.*, Case No. BC653164, California Superior Court, County of Los Angeles, Honorable
27 Judge Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California
28 Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Teran v.*

1 *Western Plastics, Inc.*, Case No. RIC1722619, California Superior Court, County of Riverside,
2 Honorable Judge Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc.*, Case No.
3 BC688477, California Superior Court, County of Los Angeles, Honorable Judge Daniel J. Buckley
4 presiding; *Huynh v. Polypeptide Laboratories, Inc.*, Case No. BC680872, California Superior Court,
5 County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Coffee and Cabral v. Flyers*
6 *Transportation, LLC.*, Case No. 34-2017-00222084, California Superior Court, County of Sacramento,
7 Honorable Judge Alan G. Perkins presiding; *Guzman v. Century Blinds, Inc.*, Case No. RIC1723654,
8 California Superior Court, County of Riverside, Honorable Judge Sunshine Sykes presiding; and *Acuna*
9 *v. Canton Food Co., Inc.*, Case No. BC685001, California Superior Court, County of Los Angeles,
10 Honorable Judge David S. Cunningham presiding.

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

15 10. According to Defendant Fred M. Boerner Motor Co.'s ("Boerner Motor" or
16 "Defendant") website, it sells new and used trucks, parts and accessories as both a wholesaler and a
17 retailer. Defendant maintains, and maintained during the relevant time period, a location in Los
18 Angeles, California. On August 12, 2019, Plaintiff filed a putative class action complaint against
19 Defendant in Los Angeles County Superior Court. On August 14, 2020, Plaintiff filed a First Amended
20 Class and Representative Action Complaint ("FAC"). In the FAC, Plaintiff alleges that Defendant: (1)
21 failed to provide all legally required meal periods; (2) failed to authorize and permit all legally required
22 rest periods; (3) failed to provide accurate, itemized wage statements; (4) failed to pay all wages owed
23 upon termination; (5) engaged in unlawful business practices; and (6) is liable for civil penalties under
24 the Labor Code Private Attorneys General Act of 2004 ("PAGA").

25 11. As explained in detail in the Motion for Preliminary Approval, Plaintiff's primary
26 theories of liability are related to Defendant's alleged unlawful wage and timekeeping policies and
27 practices and its failure to provide Settlement Class members all legally complaint duty-free meal and
28 rest periods. Specifically, Plaintiff alleges that she and Settlement Class members were not provided

1 with all legally-required off-duty first meal periods beginning before the end of the fifth hour of work.
2 Plaintiff alleges that due to Boerner Motor's work demands, Plaintiff was typically not provided an
3 uninterrupted meal period as she was often asked to perform tasks during a given meal period. Plaintiff
4 alleges that Boerner Motor imposed such a high demand on Plaintiff and other non-exempt employees,
5 that Plaintiff and other non-exempt employees would often have to wait until there was a lull in
6 assignments before being permitted to take a meal period. Furthermore, despite starting her scheduled
7 shift at approximately 8:00 a.m., Plaintiff alleges that she was often not permitted to take her meal break
8 until 1:30 p.m., well after the end of her fifth hour of work.

9 12. Boerner Motor counters that it has always provided non-exempt employees with an
10 opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in
11 employee timekeeping records were solely the result of employee choice, rather than any policy or
12 practice of Boerner Motor. Boerner Motor points out that under *Brinker Restaurant Corp. v. Superior*
13 *Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods,
14 not "ensure" meal periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at
15 1038 (rejecting "ensure" standard). Finally, Boerner Motor contends Plaintiff's meal period claim is
16 not suited for class certification, since individual inquiries would be required to assess which
17 employees took non-compliant meal periods, how many meal periods were non-compliant or missed,
18 and the reasons why a particular employee took a non-compliant meal period or missed a meal period
19 during a particular shift.

20 13. In addition, Plaintiff alleges that she and other Settlement Class members were not
21 separately compensated for required rest periods. Specifically, Plaintiff alleges that while working for
22 Boerner Motor, she was unable to take a 10-minute rest period for every 4-hour period worked, or *major*
23 *fraction thereof*, due to the work demands. Further, Plaintiff alleges that Boerner Motor's policy stated
24 in Boerner Motor's employee handbook failed to permit and authorize legally complaint rest periods.

25 14. Boerner Motor contends it has always maintained and enforced lawful rest period
26 policies and practices, and that Settlement Class members were provided with all off-duty rest periods
27 in compliance with California law. Further, Boerner Motor argues that Plaintiff's rest period claim is
28 inherently unsuited for class treatment as it requires an individualized inquiry into whether each

1 Settlement Class member was in fact authorized and permitted to take a compliant rest period, which
2 would devolve into an unmanageable series of mini-trials.

3 15. Plaintiff alleges that Boerner Motor failed to comply with Labor Code § 226(a) which
4 requires that wage statements provide the hours worked and the rate at which they are being paid. As
5 a result of the alleged unpaid meal and rest period premium wages described above, Plaintiff alleges
6 that Boerner Motor issued inaccurate wage statements in violation of Labor Code § 226.

7 16. Boerner Motor argues the alleged wage statement violations could not be shown to be
8 “knowing and intentional,” and that meal and rest period violations cannot serve as a basis for wage
9 statement penalties. Boerner Motor further argues that Plaintiff cannot show that they or any other
10 employee “suffer[ed] injury” as a result of the alleged wage statement violations, as required by Lab.
11 Code § 226(e) for imposition of penalties.

12 17. Plaintiff alleges that as a result of the above, Boerner Motor failed to pay all wages
13 owed to employees upon their separation of employment.

14 18. Boerner Motor asserts it has strong defenses to the waiting time claim because there
15 exist good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties.

16 19. Plaintiff alleges that Boerner Motor is liable for civil penalties under the Labor Code
17 Private Attorney General Act (“PAGA”).

18 20. Boerner Motor asserts the PAGA claim would fail with those claims. Boerner Motor
19 also maintains that given its good faith defenses, this Court would exercise its discretion to substantially
20 reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff’s claims.

21 21. These considerations, not only bore heavily on the negotiations leading to the
22 Settlement, but also confirm that the Settlement is fair, adequate, and reasonable compromise in view
23 of the risks of further litigation. As detailed in Plaintiff’s Motion for Preliminary Approval, Plaintiff
24 carefully vetted the claims at issue and conducted a detailed liability analysis of class-wide data to
25 arrive at the calculated damages figures. Thus, while these risks are far from exhaustive, they
26 demonstrate that the Settlement is fair, adequate, and reasonable in view of them.

27 22. In connection with mediation, Defendant produced a sampling of time records and
28 payroll data, as well as its wage and hour policies and other relevant documents and information.

1 Plaintiff retained an expert who holds a Ph.D. in economics, to conduct an analysis of the payroll data
2 and time records produced by Defendant to calculate Defendant's potential exposure for each of
3 Plaintiff's claims. After the detailed review of the payroll and time records and other documents and
4 policies produced by Defendant, Class Counsel drew on their extensive experience in similar cases to
5 assess the strengths and weaknesses of Plaintiff's case. This discovery allowed the parties to assess
6 the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could not
7 be reached.

8 23. On May 5, 2020, including a detailed analysis of Defendant's potential exposure
9 prepared by Plaintiff's retained expert who holds a Ph.D. in economics, the Parties participated in a
10 full-day mediation with Steven G. Mehta, Esq., a well-respected wage and hour class action mediator.
11 During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of
12 certification of Plaintiff's claims, and the legal basis for the claims and defenses. After a full day
13 mediation, the Parties reached agreement and executed a Memorandum of Understanding ("MOU").
14 Thereafter, the Parties signed the Stipulation of Settlement.

15 24. Plaintiff submitted the Settlement to the Court with her Motion for Preliminary
16 Approval on July 17, 2020. On August 11, 2020, the Court issued an order Granting Preliminary
17 Approval of the Settlement. Attached hereto as **Exhibit A** is a true and correct copy of the on August
18 11, 2020 Order Granting Preliminary Approval.

19 25. The Settlement Class encompasses "all current and former non-exempt, hourly,
20 employees of Defendant Fred M. Boerner Motor Co. who worked in California at any time from August
21 12, 2015 through August 11, 2020."

22 26. Funds remaining unclaimed will be distributed to the California State Controller's
23 Office – Unclaimed Property Fund in the name of the Settlement Class member.

24 27. In my experience in wage and hour class action matters similar to this one, fee awards
25 generally average around one-third of the gross recovery.

26 28. My law firm's and co-counsel's work on this case includes, but is not limited to:
27 conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing
28 Defendant's documents and policies, analyzing Settlement Class members' timekeeping data and

1 payroll records, creating a comprehensive damages model, preparing for and attending mediation,
2 negotiating and preparing the long-form Settlement Agreement, preparing the Motions for Preliminary
3 and Final Approval, overseeing the settlement administration process, communicating with Settlement
4 Class members, and otherwise litigating this case.

5 29. Since undertaking representation of Plaintiff, my firm and/or co-counsel's firm dedicated
6 substantial resources to this litigation, including expending a total of \$18,435.94 in actual litigation
7 costs and approximately \$1,036 in anticipated future costs⁶, without receiving any compensation to
8 date. A true and correct copy of my firm's and/or my co-counsel Haines Law Group's costs summary
9 in this matter is attached hereto as **Exhibit B**.

10 30. My experience in matters similar to this one was integral in evaluating the strengths and
11 weaknesses of this case and the reasonableness of the Settlement. Practice in the narrow field of wage
12 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and
13 federal law, as well as the procedural law of class action litigation. This case involved nuanced legal
14 issues including questions surrounding Defendant's requirement to "provide" meal periods, "authorize
15 and permit" rest periods, and the propriety of statutory penalties, to name just a few.

16 31. Given the considerable potential for adverse outcomes in this case, including, but not
17 limited to losing on class certification and/or merits issues, or Defendant obtaining individual releases
18 for a fraction of what Settlement Class members are receiving through this Settlement. Therefore, the
19 contingent risk borne by Class Counsel was great. In addition to the legal and procedural challenges
20 this lawsuit presented, there were also other practical challenges. There was a real risk that my firm
21 and co-counsel's firm would not be compensated for our work, because our firms handled this matter
22 on a purely contingent basis. Thus, Plaintiff was not responsible for paying my firm's attorneys' fees
23 and my firm could only recover attorneys' fees if Plaintiff was successful. By the time I (or someone
24

25 ⁶ Class counsel expects to incur approximately \$1,036 in future costs for filing the instant motion, filing the
26 final declaration regarding distribution of settlement, CaseAnywhere fees, service and messenger fees, postage
27 fees, and/or LACourtConnect costs future court appearances. Specifically, Plaintiff estimates she will incur
28 approximately \$1,026 in future costs for CaseAnywhere fees for approximately four quarters following final
approval until case closure. In addition, Plaintiff estimates approximately \$100 for LACourtConnect costs for
the December 10, 2020 Final Fairness Hearing and filing and service fees associated with filing the instant
motion and the final declaration regarding distribution of settlement.

from my firm) attend the final approval hearing in this matter, my firm and co-counsel firm will have litigated this case for well one year with no payment, all while bearing the risk of non-payment if Plaintiff was unsuccessful. Moreover, as discussed above, Class Counsel has already advanced in excess of \$19,471.94 in litigation costs on a contingency basis, which also carried risk because Class Counsel would not recoup its costs in the event Plaintiff did not prevail in this lawsuit.

32. In this case, Class Counsel have a lodestar of \$119,555.50 without the use of any multiplier. Therefore, the lodestar is actually higher than the \$87,333.33 fee request. The following is a general summary showing the number of hours of work performed by each attorney and paralegal in my firm and co-counsel's firm on this case:

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (22nd Year Attorney)	\$750	53.5	\$40,125.00
Elizabeth Nguyen (15th Year Attorney)	\$650	61.2	\$39,780.00
Paul K. Haines (14th Year Attorney)	\$650	16.4	\$10,660.00
Milan Moore (5th Year Attorney)	\$400	12.2	\$4,880.00
Romina Tamiry (1 st Year Attorney)	\$295	70.4	\$20,768.00
Paralegals	\$175	19.1	\$3,342.50
Total Lodestar			\$119,555.50

33. My proposed hourly rate of \$750, Ms. Nguyen's proposed hourly rate of \$650, Mr. Haines' proposed hourly rate of \$650, Ms. Moore's proposed hourly rate of \$400, and Ms. Tamiry's proposed hourly rate of \$295 are reasonable in light of our respective skills, wage and hour class action

litigation experience, reputation, and fee awards to other attorneys of similar experience in California. Moreover, our requested hourly rates are in line with the *Laffey* Matrix, a true and correct copy of which is attached hereto as **Exhibit C**.

34. The attorneys' fee award requested is consistent with those routinely awarded by California superior courts. California superior courts frequently grant common fund awards of 33%. *See, e.g., Ochoa v. Haralambos Beverage Co.*, No. BC319588 (Super. Ct., Los Angeles County, Feb. 1, 2007) (33.3% fee award with no mention of lodestar crosscheck); *Jones v. Alliance Imaging, Inc.*, No. RG05210418 (Super. Ct., Alameda County, Nov. 27, 2006) (33% fee award with no mention of lodestar crosscheck); *Wisniewski v. Pacific Maritime Assoc.*, No. BC293134 (Super. Ct., Los Angeles County, Nov. 20, 2006) (30.7% fee award from \$12.9 million settlement with no mention of lodestar crosscheck); *Garcia v. Save Mart Supermarkets*, No. 312026 (Super. Ct., Stanislaus County, Aug. 3, 2004) (33% fee award with no mention of lodestar crosscheck); *Terrell v. Ocean's 11 Casino, Inc.*, No. GIC795732 (Super. Ct., San Diego County, Feb. 10, 2004) (approving 33% fee award); *Big Lots Overtime Cases*, JCC Proceeding No. 4283, San Bernardino County Superior Court, Feb 4, 2004) (approving a 33% fee recovery); *Tokar v. GEICO*, (San Diego Superior Court, No. GIC 810166, July 9, 2004) (approving award of 33-1/3%); *Davis v. The Money Store, Inc.*, (San Diego County Superior Court, No. 99AS01716, December 26, 2000) (33-13% of the settlement).

35. Indeed, numerous courts have awarded attorneys' fees of up to, or in excess of 40% of the common fund. *Ammari Electronics, et al. v. Pacific Bell Directory*, Alameda County Sup. Ct., Case No. RG05198014 (awarded 43.8%) (2015); *In re California Indirect Purchaser X Ray Film Antitrust Litigation*, San Francisco Sup. Ct. 1998 (citing *Abzug v. Kerkorian*, Los Angeles Sup. Ct., Nov. 19, 1990, Case No. CA-00981 (45%) and *Haitz v. Meyer*, Alameda County Sup. Ct., August 20, 1990, Case No. 5729683 (45%)); *Hall v. Cinema 7, Inc.*, San Francisco Sup. Ct., July 16, 2008, Case No. CGC-01-409105 (53%); and *Rundberg v. Intrawest Napa Dev. Co.*, Napa County Sup. Ct., January 15, 2014, Case No. 26-56886 (40%).

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

1 law practice my firm can only properly litigate a limited number of cases at one time. The professional
2 demands of this case were significant, including a significant number of hours of attorney and paralegal
3 time. This litigation precluded my firm from other employment due to the time and financial
4 commitments required by the case. Indeed, because my firm takes on cases on a purely contingency
5 fee, we are only compensated for our time if we successfully settle a case or prevail at trial.
6 Accordingly, I believe the requested fees are reasonable.

7 37. The requested service award to Plaintiff of \$6,500 is also reasonable given Plaintiff's
8 efforts in this case and the risks she undertook on behalf of Settlement Class members. Plaintiff
9 gathered documents for use in the lawsuit, and attended in person/telephonic meetings with Class
10 Counsel discussing the case, the merits, the defenses, and the overall fairness of the settlement reached.
11 Thus, the service award to Plaintiff is appropriate and justified as part of the Settlement and should be
12 finally approved.

13 38. Plaintiff served the proposed Settlement Agreement on the California Labor &
14 Workforce Development Agency ("LWDA") on July 17, 2020, the same date that she filed the Motion
15 for Preliminary Approval. On October 16, 2020, Plaintiff served the Order granting preliminary
16 approval on the LWDA. True and correct copies of the email confirmations received from the LWDA
17 after Plaintiff submitted the foregoing documents are attached hereto as **Exhibit D**.

18
19 I declare under penalty of perjury under the laws of the State of California that the foregoing is
20 true and correct. Executed on November 16, 2020, at El Segundo, California.

21
22 

23 Scott M. Lidman
24
25
26
27
28

EXHIBIT A

EXHIBIT A

ORIGINAL

FILED
Superior Court of California
County of Los Angeles

AUG 11 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By Aldwin Lim Deputy

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Attorneys for Plaintiff
PATRICIA HERNANDEZ

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**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

[Assigned for all purposes to Hon. William
F. Highberger, SSC-10]

**[PROPOSED] ORDER GRANTING
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 The Motion of Plaintiff Patricia Hernandez ("Plaintiff") for Preliminary Approval of Class
2 Action Settlement ("Motion") came on regularly for hearing before this Court on August 11, 2020 at
3 1:30 p.m. in Department SSC-10. The Court, having considered the proposed Stipulation of Settlement
4 (the "Settlement"), attached as Exhibit 1 to the Declaration of Scott M. Lidman filed concurrently with
5 the Motion; having considered Plaintiff's Motion, Memorandum of Points and Authorities in support
6 thereof, and supporting declarations filed therewith; and good cause appearing, HEREBY ORDERS
7 THE FOLLOWING:

8 1. The Court GRANTS preliminary approval of the class action settlement as set forth in
9 the Settlement and finds its terms to be within the range of reasonableness of a settlement that ultimately
10 could be granted approval by the Court at a Final Fairness Hearing. For purposes of the Settlement,
11 the Court finds that the proposed Settlement Class is ascertainable and that there is a sufficiently well-
12 defined community of interest among the members of the Settlement Class in questions of law and fact.

13 Therefore, for settlement purposes only, the Court grants conditional certification of the following
14 Settlement Class:

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

19 2. For purposes of the Settlement, the Court designates named Plaintiff Patricia Hernandez
20 as Class Representative, and designates Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
21 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel.

22 3. The Court designates Phoenix Settlement Administrators ("Phoenix") as the third-party
23 Settlement Administrator for mailing notices.

24 4. The Court approves, as to form and content, the Notice of Pendency of Class Action
25 and Proposed Settlement and Notice of Individual Settlement Award attached to the Settlement as
26 **Exhibit B.**

27 5. The Court finds that the form of notice to the Settlement Class regarding the pendency
28 of the action and of the Settlement, and the methods of giving notice to Settlement Class members,
constitutes the best notice practicable under the circumstances, and constitute valid, due, and sufficient
notice to all members of the Settlement Class. The form and method of giving notice complies fully

1 with the requirements of California Code of Civil Procedure section 382, California Civil Code section
2 1781, California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and
3 other applicable law.

4 6. The Court further approves the procedures for Settlement Class members to opt out of
5 or object to the Settlement, as set forth in the Notice of Pendency of Class Action and Proposed
6 Settlement.

7 7. The procedures and requirements for filing objections in connection with the Final
8 Fairness Hearing are intended to ensure the efficient administration of justice and the orderly
9 presentation of any Settlement Class member's objection to the Settlement, in accordance with the due
10 process rights of all Settlement Class members.

11 8. The Court directs the Settlement Administrator to mail the Notice of Pendency of Class
12 Action and Proposed Settlement and Notice of Individual Settlement Award to all of the Class members
13 in accordance with the terms of the Settlement.

14 9. The Class Notice shall provide at least 45 calendar days' notice for Settlement Class
15 members to opt out of, or object to, the Settlement.

16 10. The Final Fairness Hearing on the question of whether the Settlement should be finally
17 approved as fair, reasonable, and adequate is scheduled in Department SSC-10 of this Court, located
18 at 312 N. Spring Street, Los Angeles, California 90012 on Dec. 10, 2020 at 1:30 ~~a.m.~~ p.m. WPK
19 p.m.

20 11. At the Final Fairness Hearing, the Court will consider: (a) whether the Settlement
21 should be finally approved as fair, reasonable, and adequate for the Settlement Class; (b) whether a
22 judgment granting final approval of the Settlement should be entered; and (c) whether Plaintiff's
23 application for reasonable attorneys' fees, reimbursement of litigation expenses, service award to
24 Plaintiff, and payment to the Labor and Workforce Development Agency ("LWDA") for penalties
25 under the Labor Code Private Attorneys General Act ("PAGA") should be granted.

26 12. Counsel for the parties shall file memoranda, declarations, or other statements and
27 materials in support of their request for final approval of the Settlement, attorneys' fees, litigation
28 expenses, Plaintiff's service award, settlement administration costs, and payment to the LWDA for

PAGA penalties prior to the Final Fairness Hearing according to the time limits set by the Code of Civil Procedure and the California Rules of Court.

13. Plaintiff is granted leave to file the First Amended Complaint Class and Representative Action Complaint, which is attached as **Exhibit A** to the Settlement.

14. An implementation schedule is below:

Event	Date	Actual Date ¹
Defendant to provide Class Data to Settlement Administrator	15 calendar days after issuance of the preliminary approval order	August 26, 2020
Settlement Administrator to mail Notice Packets to Class Members	10 business days after receiving Class Information from Defendant	September 10, 2020
Deadline for Class Members to request exclusion from, submit disputes, or object to, the Settlement	45 calendar days after mailing of the Notice by the Settlement Administrator	October 26, 2020 ²
Deadline for Plaintiff to file Motion for Final Approval of Class Action Settlement:	16 Court days before the Final Fairness Hearing	
Final Fairness Hearing:	Dec. 10, 2020 1:30pm	

14. Pending the Final Fairness Hearing, all proceedings in this action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are stayed.

15. Counsel for the parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the Settlement which are not materially inconsistent with either this Order or the terms of the Settlement.

IT IS SO ORDERED.

Dated: 8/11, 2020


Honorable William F. Highberger
Judge of the Superior Court

¹ These dates are based on the Court granting preliminary approval at the hearing, currently noticed for August 11, 2020.

² Plaintiff recognizes that 45 calendar days would be Sunday, October 25, 2020. Therefore, Plaintiff calendared this deadline for the next business day, Monday, October 26, 2020.

EXHIBIT B

EXHIBIT B

Lidman Law, APC and Haines Law Group, APC

Expense Summary

Patricia Hernandez v. Fred M. Boerner Motor Co.

EXPENSE	AMOUNT
Mediation Costs	\$6,750.00
Expert Fees	\$8,790.50
Filing, Service, and Messenger Fees	\$2,689.33
Copying	\$103.25
Postage	\$16.05
Travel to/from Court Expenses	\$34.55
Legal Research	\$52.26
Anticipated costs for Case Anywhere fees, filing fees, service and messenger fees, postage fees, and/or LACourtConnect costs for future court appearances	\$1,036.00
TOTAL:	\$19,471.94

EXHIBIT C

EXHIBIT C

LAFFEY MATRIX

[History](#)
[Case Law](#)
[Expert Opinions](#)
[See the Matrix](#)
[Contact us](#)
[Home](#)
[Links](#)

<tr>

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389

6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., McDowell v. District of Columbia, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); Salazar v. Dist. of Col., 123 F.Supp.2d 8 (D.D.C. 2000).

* "Years Out of Law School" is calculated from June 1 of each year, when most law students graduate. "1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). "4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier "1-3" from June 1, 1996 until May 31, 1999, would move into tier "4-7" on June 1, 1999, and tier "8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT D

EXHIBIT D

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [Dana Joudi](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Friday, July 17, 2020 2:02:02 PM

07/17/2020 02:01:45 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm



State of California
Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

Proposed Settlement of PAGA case

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".

[Search for PAGA Case number](#)

Your Information (Person Who is Filing)

Your First Name *

Your Last Name *

Your Email Address *

Your Street Name, Number and Suite/Apt *

Your Mobile Phone Number

Your City *

Your Work Phone Number

Your State *

Your Zip/Postal Code *

Court and Hearing Information

Court *

Court Case Number *

Hearing Date (if any)

Hearing Time

Hearing Location

Number of aggrieved employees *

Gross settlement amount *

262000

Gross penalty amount *

10000

Penalties to LWDA *

7500

Date of proposed settlement *

07/14/2020

Proposed Settlement and Other Documents

Proposed Settlement *

 2020-07-17 Boe...t (final).pdf

Other Attachment (if any)

 2020-07-17 Bo... tables).pdf

Other Attachment (if any)

 2020-07-17 B...A Motion.pdf[Remove](#)[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [Gladys Beltran](#)
Subject: Thank you for your Court Order/Judgment Submission
Date: Friday, October 16, 2020 1:22:53 PM

10/16/2020 01:22:45 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Order/Judgment

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm



State of California
Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

Court Order or Judgment in PAGA case

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".

[Search for PAGA Case number](#)

Your Information (Person Who is Filing)

Your First Name *

Scott

Your Last Name *

Lidman

Your Email Address *

gbeltran@lidmanlaw.com

Your Street Name, Number and Suite/Apt *

2155 Campus Drive, Suite

Your Mobile Phone Number

4243224772

Your City *

El Segundo

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

90245

Court Case Name and Plaintiff Information

Court Case Name

Patricia Hernandez v Fred

Plaintiff Name

Patricia Hernandez

Order or Judgment Details

Gross settlement amount *

262000

Gross penalties *

10000

Penalties to LWDA *

7500

Fee award *

87333.33

Court Order/Judgment File and Other Files

Court Order or Judgment *

 2020-08-11 F...version).pdf

Other Attachment

 No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.