

## 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](mailto:rcutbirth@fmglaw.com); [jsuarez@fmglaw.com](mailto: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](mailto:slidman@lidmanlaw.com) and [enguyen@lidmanlaw.com](mailto:enguyen@lidmanlaw.com)

Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245; [phaines@haineslawgroup.com](mailto: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: \_\_\_\_\_

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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](mailto:rcutbirth@fmglaw.com); [jsuarez@fmglaw.com](mailto: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](mailto:slidman@lidmanlaw.com) and [enguyen@lidmanlaw.com](mailto:enguyen@lidmanlaw.com)

Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245; [phaines@haineslawgroup.com](mailto: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: 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**

Scott M. Lidman (SBN 199433)  
slidman@lidmanlaw.com  
Elizabeth Nguyen (SBN 238571)  
enguyen@lidmanlaw.com  
Milan Moore (SBN 308095)  
mmoore@lidmanlaw.com  
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rtamiry@lidmanlaw.com  
2155 Campus Drive, Suite 150  
El Segundo, California 90245  
Tel: (424) 322-4772  
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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

**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 5<sup>th</sup> 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.

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

## SIXTH CAUSE OF ACTION

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

**(AGAINST ALL DEFENDANTS)**

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

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

- a) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees;
- b) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize 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.  
28

1 Dated: \_\_\_\_\_, 2020

Respectfully submitted,

LIDMAN LAW, APC

3  
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

11  
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?***

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