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8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 JOSE HURTADO,

12 Plaintiff,

13 vs.

14 JS FOLSOM AUTOMOTIVE, INC., a
Delaware Corporation; FOLSOM BUICK-
15 PONTIAC-GMC, INC., an individual;
16 CLIFTON JOSEPH SMITH, an individual;
DENISE DEWEY, a Delaware Corporation;
17 and DOES 1 to 100, inclusive,

18 Defendants.
19
20
21

Case No. 34-2020-00284813

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT**

Reservation No. 2568549

Date: July 1, 2021

Time: 1:30 p.m.

Dept.: 53

Judge: Hon. Shama H. Mesiwala

Filed: August 25, 2020

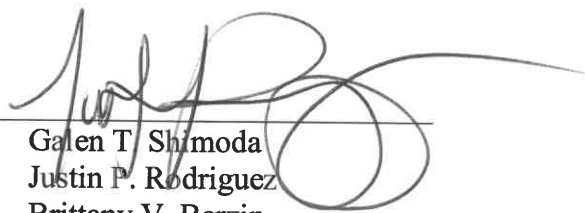
Trial Date: None Set
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<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Proposed Private Attorneys General Act Settlement
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the Labor and Workforce Development Agency
D	Simpluris, Inc. Quote
E	Proposed Notice of Settlement
F	Proof of Submission of Proposed Settlement Agreement to LWDA
G	Plaintiff's Itemized Costs

Dated: May 27 2021

Shimoda Law Corp.

By:



Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

Exhibit A

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CLIFTON JOSEPH SMITH and DENISE DEWEY

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JOSE HURTADO,

Plaintiff,

vs.

JS FOLSOM AUTOMOTIVE, INC., a
Delaware Corporation; FOLSOM BUICK-
PONTIAC-GMC, INC., an individual;
CLIFTON JOSEPH SMITH, an individual;
DENISE DEWEY, a Delaware Corporation;
and DOES 1 to 100, inclusive,

Defendants.

Case No.: 34-2020-00284813

**PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Filed: August 25, 2020

Trial Date: None Set

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT

1 This Private Attorneys General Act Settlement ("Agreement") is made and entered into between
2 the Plaintiff Jose Hurtado ("Plaintiff"), on behalf of himself, the Labor and Workforce Development
3 Agency, and Aggrieved Employees, and Defendants JS Folsom Automotive, Inc., Clifton Joseph Smith
4 and Denise Dewey ("Defendants"). This Agreement is subject to the terms and conditions set forth below
5 and approval of the Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 "Action" means the above stated lawsuit, *Hurtado v. JS Folsom Automotive, Inc., et al.*,
9 Sacramento County Superior Court, Case No. 34-2020-00284813, filed August 25, 2020.

10 1.2 "Aggrieved Employee(s)" means all non-exempt employees employed during the PAGA
11 Claim Period. The estimated number of Aggrieved Employees is 86.

12 1.3 "Claim Amount" means an individual Aggrieved Employees' allocation of the Net
13 Settlement Amount, as defined in Section 1.14 and 5.7.

14 1.4 "Claims Administrator" means and refers to Simpluris, Inc., the third-party entity that will
15 administer the Agreement as outlined in Section 7.

16 1.5 "Claims Administrator Costs" means the fees and expenses reasonably incurred by the
17 Claims Administrator as a result of the procedures and processes expressly required by this Agreement,
18 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
19 preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs and fees
20 associated with preparing, issuing and mailing any and all notices and other correspondence to Aggrieved
21 Employees; all costs and fees associated with communicating with Aggrieved Employees, Plaintiff's
22 Counsel, and Defendants' Counsel; all costs and fees associated with computing, processing, reviewing,
23 and paying the Claim Amounts, and resolving disputes; all costs and fees associated with calculating tax
24 withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any,
25 and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with
26 preparing any tax returns and any other filings required by any governmental taxing authority or agency;
27 all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the
28

course of administering Claim Amounts; and any other costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of its duties under this Agreement.

1.6 "Complaint" means the operative Complaint on file in the Action with the Court.

1.7 "Court" means the Sacramento County Superior Court.

1.8 "Defendants" means JS Folsom Automotive, Inc., Clifton Joseph Smith and Denise Dewey.

1.9 "Defendants' Counsel" means Law Offices of John A. Britton, Inc. and Flesher Schaff & Schroeder, Inc.

1.10 "Effective Date" means on the day a signed order approving this Agreement has been filed by the Court.

1.11 "Final Approval Date" means the date the Court enters a signed order granting approval of the Agreement.

1.12 "Gross Settlement Amount" is the sum of One Hundred Twenty-Five Thousand Dollars and No Cents (\$125,000.00).

1.13 "LWDA" means the California Labor and Workforce Development Agency.

1.14 "Net Settlement Amount" is the portion of the Gross Settlement Amount available for distribution between Aggrieved Employees and the LWDA pursuant to Labor Code section 2699(i), after deduction of Plaintiff's attorneys' fees and litigation costs, and Claims Administrator Costs.

1.15 "Notice of Settlement" means the document substantially in the form attached hereto as Exhibit 1.

1.16 "PAGA" means Private Attorneys General Act.

1.17 "PAGA Claim Period" means June 17, 2019 to up to either (1) the Final Approval Date or (2) June 15, 2021, whichever is earlier.

1.18 "PAGA Payment" means the 75% share of the Net Settlement Amount paid to the LWDA pursuant to Labor Code section 2699(i).

1.19 "Parties" means Defendants and Plaintiff.

1.20 "Plaintiff" means Jose Hurtado.

1.21 "Plaintiff's Counsel" means Galen T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin of the Shimoda Law Corp.

1.22 "QSF" means a Qualified Settlement Fund set up by the Claims Administrator for the benefit of the Aggrieved Employees and from which the payments under this Agreement shall be made. Any amounts Defendants have agreed to pay under this Agreement shall remain the property of Defendants until the payments required under the Agreement are made.

1.23 "Qualifying Pay Periods" are pay periods worked by Aggrieved Employees during the PAGA Claim Period. The calculation of an Aggrieved Employees' pay periods and a determination as to whether an Aggrieved Employee was actively employed in California in a particular pay period shall be construed from Defendants' records.

1.24 "Releasees" means Defendants, as well as Defendants' officers, shareholders, directors, agents, employees, attorneys, and insurers.

1.25 "Released PAGA Claims" means all Private Attorneys General Act claims for civil penalties contained in Plaintiff's letter to the LWDA and/or Complaint through the PAGA Claim Period. pled against Defendants (*i.e.*, Labor Code §§ 510, 1194, 1197.1, 226.7, 512, 226, 226.3, 201, 202, 203, 256, 558, 558.1, 246, 246.5 and 248.5). However, the Released PAGA Claims shall not extend to any PAGA claims outside of those asserted in the Action or the PAGA Claim Period.

2. DESCRIPTION OF THE LITIGATION

2.1 On or about June 17, 2020, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA for failure to pay overtime, failure to pay minimum wages, failure to provide meal and rest periods, failure to provide accurate wage statements, failure to pay final wages, and failure to provide paid sick leave. The LWDA did not respond to the notice within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys General on all alleged PAGA claims.

2.2 After exhausting administrative remedies, Plaintiff filed a Complaint on August 25, 2020 in Sacramento County Superior Court on behalf of himself and Aggrieved Employees for claims alleged in the June 17, 2020 notice to the LWDA.

2.3 Through informal discovery, Defendants and Defendants' Counsel provided Plaintiff's Counsel with copies of all applicable versions of its policies and procedures, information on the number of Aggrieved Employees, including, but not limited to, Aggrieved Employees' workweeks, dates of employment, total number of Aggrieved Employees, their rates of pay, and pay periods as well as timecard data and payroll reports for the Aggrieved Employees.

2.4 On April 8, 2021, the Parties participated in a lengthy mediation with private mediator David Perrault, Esq. At the conclusion of the mediation, the Parties were able to come to a resolution. At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

2.5 Discussions between Plaintiff and Plaintiff's Counsel, between counsel for the Parties, the mediator, document productions, extensive legal analysis, the provision of information by Defendants to Plaintiff and the detailed analysis of the sampled records have permitted each side to assess the relative merits of the PAGA claims and the defenses to those claims.

2.6 In the Action, Plaintiff contends that Defendants violated California law by failing to incorporate the value of nondiscretionary remuneration, including bonuses (*e.g.*, employees were paid specific amounts per units/vehicles sold), into Plaintiff's and Aggrieved Employees' regular rates of pay for the purpose of calculating overtime wages and paid sick time, failing to provide paid rest periods and failing to pay for all hours worked for certain individuals within the aggrieved employee group, failing to provide an accurate itemized wage statement containing all the required items set forth in Labor Code section 226(a), and failing to pay all wages owed at separation. Defendants have denied each of Plaintiff's claims. The agreed upon Gross Settlement Amount was reached after evaluating the Parties' theories of potential exposure for the PAGA claims. The Parties, with the assistance of the mediator, also assessed appropriate discounts to the potential liability based on Defendants' factual and legal contentions and defenses.

2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery and the information exchanged to date, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Plaintiff's Counsel, Defendants, and Defendants' Counsel have concluded that it is desirable that the PAGA claims asserted in the Action be settled in a manner and upon such terms and conditions set forth

herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the Parties potentially face. Plaintiff, Plaintiff's Counsel, Defendants, and Defendants' Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

3. THE CONDITIONAL NATURE OF THIS AGREEMENT

3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the PAGA claims asserted in the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. The Parties enter into this Agreement and associated settlement on a conditional basis in order for the Court to evaluate and approve the settlement. If the Court does not enter an order approving the Agreement, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

3.2 Defendants have denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendants have agreed to resolve the asserted PAGA claims in the Action via this Agreement, but to the extent this Agreement is deemed void or the Final Approval Date does not occur, Defendants do not waive, and are expressly reserving, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge representative or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

4. SCOPE OF THE AGGRIEVED EMPLOYEES

4.1 The scope of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Aggrieved Employees as defined in Section 1.2.

4.2 Aggrieved Employees entitled to recover under this Agreement will include only those individuals who are identified in Defendants' records as having worked as an Aggrieved Employee.

1 **5. TERMS OF THE SETTLEMENT**

2 The Parties agree as follows:

3 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
4 Section 6, Defendants shall pay the Gross Settlement Amount (\$125,000.00). Funding of the Gross
5 Settlement Amount shall occur within twenty-one (21) days after the Final Approval Date to be held in
6 trust in a QSF by the Claims Administrator. The Gross Settlement Amount represents the maximum
7 amount payable under this Agreement by Defendants, and includes without limitation, attorneys' fees,
8 costs and litigation expenses directly related to the Action incurred to date, as well as all such fees and
9 costs incurred in documenting the Agreement, administering the Agreement (including Claims
10 Administrator Costs), and obtaining approval of the Agreement.

11 5.2 Attorneys' Fees and Costs: Plaintiff's Counsel will apply to the Court for attorney's fees
12 of 35% or \$43,750.00 of the Gross Settlement Amount, which shall be paid from the Gross Settlement
13 Amount. Defendants have agreed to not oppose Plaintiff's Counsel's application for attorneys' fees so
14 long as it does not exceed the \$43,750.00 threshold. Plaintiff's Counsel will also be entitled to
15 reimbursement for advanced litigation expenses not to exceed \$10,000.00, which shall be paid from the
16 Gross Settlement Amount. Defendants have agreed to not oppose Plaintiff's Counsel's request for
17 reimbursement for advanced litigation expenses so long as they do not exceed the \$10,000.00 threshold.
18 The Claims Administrator will issue Class Counsel an IRS Form 1099 for the attorneys' fees and costs
19 paid under this Agreement. In the event that the Court awards less than the requested attorney's fees
20 and/or costs, the portion of the requested amounts not awarded to Plaintiff's Counsel shall be added to the
21 Net Settlement Amount as defined in section 1.14.

22 5.3 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross
23 Settlement Amount and shall not exceed \$5,000.00. The difference between any actual costs and the
24 allocated \$5,000.00 shall be added to the Net Settlement Amount.

25 5.4 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount allocated
26 to Aggrieved Employees that was not claimed by Aggrieved Employees by cashing their respective
27 settlement checks before the deadline to do so, that remaining amount shall be donated equally, i.e. 50/50,
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to Capital Pro Bono, Inc. and the Center for Workers' Rights. No portion of the Gross Settlement Amount will revert to Defendants for any reason.

5.5 No Additional Benefits Contributions: All Claim Amounts paid to Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were actually received by Aggrieved Employees. It is expressly understood and agreed that the receipt of such Claim Amounts will not entitle any Aggrieved Employee to any new or additional compensation or benefits under any company bonus or other compensation or benefit plan or agreement in place during the period covered by the Agreement, nor will it entitle any Aggrieved Employee to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Agreement that the Claim Amounts provided for in this Agreement are the sole payments to be made by Defendants to the Aggrieved Employees in connection with this Agreement (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Agreement).

5.6 Tax Allocation: The Parties recognize that the Claim Amounts to be paid to Aggrieved Employees reflect settlement of a dispute over claimed penalties. The characterization of Claim Amounts to Aggrieved Employees are as follows:

5.6.1 One Hundred percent (100%) of each Aggrieved Employees' Claim Amount shall be allocated for payment of disputed civil penalties. This portion of the Claim Amount consists of other income, not wages, for which the Aggrieved Employees shall receive an IRS form 1099.

5.6.2 Aggrieved Employees shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement. No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this Agreement, including the payments to Aggrieved Employees, the payments to Plaintiff's Counsel, or otherwise as to tax implications of any provision of this Agreement.

5.7 Pro Rata Distribution Formula: After Court approved attorneys' fees and costs, and Claims Administrator Costs are determined and a Net Settlement Amount has been established, that Net Settlement Amount shall be divided between the PAGA Payment and payment to Aggrieved Employees. The PAGA Payment to the LWDA will be 75% of the Net Settlement Amount. 25% of the Net Settlement

Amount will be paid to Aggrieved Employees. Each individual Aggrieved Employees' Claim Amount shall be determined by taking the Qualifying Pay Periods for the individual Aggrieved Employee and dividing that by the Qualifying Pay Periods for all Aggrieved Employees and multiplying that fraction by the 25% share of the Net Settlement Amount. Payment to Aggrieved Employees of their Claim Amount will not require the submission of any claim form.

5.8 No Additional Contribution by Defendants: Defendants' monetary obligation under this Agreement is limited to the Gross Settlement Amount as described above. All other costs and expenses arising out of or in connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless expressly provided otherwise herein. However, in the event this agreement is deemed null and void as described in Section 3 for any reason then Defendants and Plaintiff shall be equally responsible for the Claims Administrator Costs incurred between the date the Agreement was executed and the date of such event.

6. RELEASE

6.1 Upon the Effective Date, Plaintiff and each Aggrieved Employee shall be deemed to have fully, finally, and forever released the Releasees from all Released PAGA Claims.

7. SETTLEMENT ADMINISTRATION

7.1 Duties of Claims Administrator: The Claims Administrator shall be responsible for: 1) receiving and reviewing for accuracy Aggrieved Employee contact information; 2) calculating estimated Claim Amounts and any and all taxes associated with the Claim Amount, including Employer taxes; 3) taking appropriate steps to trace and locate any individual Aggrieved Employees whose address or contact information as provided to the Claims Administrator is inaccurate or outdated and mailing the Notice of Settlement to Aggrieved Employees; 4) providing notification to the appropriate state officials of this Agreement as required; 5) maintaining the Gross Settlement Amount in a QSF; 6) determining and paying the final amounts due to be paid under the Agreement after resolution of awarded attorneys' fees and costs and Claims Administrator Costs; 7) paying any residual funds from uncashed checks to the *cy pres* beneficiaries; 8) reporting to Plaintiff's Counsel and Defendants' Counsel regarding the statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of

total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable Notice of Settlements; (g) the number of Notice of Settlements undeliverable from traced addresses; 13) providing a declaration to the Court regarding the final statistics of the administration and compliance with all payment obligations under the Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Claim Amounts to Aggrieved Employees; and 15) carrying out other related tasks as necessary to effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Claims Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and obligations contemplated by the Agreement have been fully executed.

7.2 Aggrieved Employee Data: No later than seven (7) calendar days after the Final Approval Date, Defendants shall provide the Claims Administrator with the name, last known mailing address, last known telephone number, Social Security Number, Qualifying Pay Periods, and start and end date of employment (if any) of each Aggrieved Employee. The Claims Administrator shall review the data to determine the number of Qualifying Pay Periods for each Aggrieved Employee. Defendants shall not provide any information for pay periods during which an Aggrieved Employee may have worked as an exempt employee, worked outside California, or worked outside the PAGA Claim Period. The Claims Administrator shall maintain all information received from Defendants confidential to itself, and Defendants' Counsel. However, Plaintiff's Counsel shall be able to review the breakdown of Qualified Pay Periods and estimated Claim Amounts for Aggrieved Employees prior to mailing for quality assurance.

7.3 Determination of Payments to Aggrieved Employees, Plaintiff's Counsel, and the LWDA: Within seven (7) calendar days after Defendants have provided the Claims Administrator with information regarding Aggrieved Employees, the Claims Administrator shall calculate the final Net Settlement Amount, PAGA Payment, and the final Claim Amounts for Aggrieved Employees, and report the results of these calculations to Plaintiff's Counsel and Defendants' Counsel.

7.4 Claims Administrator Payments to Aggrieved Employees, Plaintiff's Counsel, and the LWDA: Defendants shall wire the Gross Settlement Amount as described in Section 5.1 to the Claims Administrator within twenty-one (21) days after the Final Approval Date to be held in trust in a QSF.

Within seven (7) days thereafter, the Claims Administrator shall deliver payment of Plaintiff's Counsels' attorney's fees and costs, the PAGA Payment payable to the LWDA, Claims Administrator Costs, and payment for Claim Amounts to Aggrieved Employees as required under this Agreement and approved by the Court. Plaintiff's Counsel shall provide the Claims Administrator with the pertinent taxpayer identification number and payment instructions for the attorney's fees and costs after the Final Approval Date.

7.5 Notice to Aggrieved Employees: The Claims Administrator will provide a Notice of Settlement, substantially in the form attached as Exhibit 1, to each Aggrieved Employee concurrently with providing payment for Claim Amounts as described in Section 7.4. The Notice of Settlement will inform Aggrieved Employees of a summary of the terms and conditions of the Agreement. The Notice of Settlement will also inform Aggrieved Employees of the Gross Settlement Amount, Net Settlement Amount, attorneys' fees and costs allocations, Claims Administrator Cost allocations, PAGA Payment allocations, the scope of individuals covered by this Agreement, and the nature and extent of the Released PAGA Claims.

7.6 Aggrieved Employee Mailing: Within seven (7) calendar days of receiving the Gross Settlement Amount as noted in Section 7.4, the Claims Administrator will perform a national change of address ("NCOA") search, update the addresses per the results of the NCOA search and will mail the respective payment for Claim Amounts, as determined in Section 7.2 and Notice of Settlement, to each Aggrieved Employee by first-class mail, postage prepaid.

7.7 Returned and/or Re-mailed Notice Packets: In the event that a Notice of Settlement and Claim Amount payment is returned to the Claims Administrator as non-delivered, the Notice of Settlement and Claim Amount payment shall be sent to the forwarding address affixed thereto within seven (7) calendar days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt to determine a correct address using a single skip-trace, computer or other search using the name, address and/or Social Security number of the individual involved, and shall then perform a single re-mailing within seven (7) calendar days. Following each search that does not result in a corrected address, for those Aggrieved Employees who appear to be current employees of Defendants at the time of the Effective Date, the Claims Administrator shall contact Defendants' Counsel for assistance and Defendants shall

1 cooperate in good faith with the Claims Administrator's reasonable efforts to obtain valid mailing
2 addresses for Aggrieved Employees to the extent they were active employees of Defendants at the time of
3 the Effective Date. In the event the procedures in this paragraph are followed and the intended recipient
4 of a Notice of Settlement and Claim Amount payment still does not receive the Notice of Settlement and/or
5 Claim Amount payment, the Aggrieved Employee shall still be bound by all terms of the Agreement,
6 including the releases contained in Sections 1.24 and 6.1, and any final judgment entered by the Court.

7 7.8 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.2
8 to 7.7 shall constitute due and sufficient notice to Aggrieved Employees of the Action and the Agreement
9 and shall satisfy Aggrieved Employees' due process rights. Nothing else shall be required of the Parties,
10 Plaintiff's Counsel, or Defendants' Counsel to provide notice of the Agreement except as expressly
11 required by the Court.

12 7.9 Settlement Check Expiration and Cy Pres: The Claims Administrator shall issue Claim
13 Amounts to Aggrieved Employees in the form of a check, which shall become null and void if not
14 deposited within one hundred twenty (120) calendar days of issuance. After one hundred twenty (120)
15 calendar days of issuance, the checks shall be voided and funds from all undeposited checks shall be
16 transmitted to the *cy pres* beneficiaries identified in Section 5.4. The Claims Administrator shall deliver
17 the *cy pres* funds within fourteen (14) calendar days after the check cashing deadline.

18 7.10 Claims Administrator Declaration Regarding Settlement Administration: Within twenty-
19 one days after the last day for Aggrieved Employees to cash their settlement checks, the Claims
20 Administrator shall provide Plaintiff's Counsel and Defendants' Counsel with a signed declaration under
21 penalty of perjury providing a complete and detailed report regarding the settlement administration and
22 that all the obligations of the Claims Administrator have been completed.

23 **8. SETTLEMENT ADMINISTRATION SCHEDULE**

24 8.1 The schedule may be modified depending on whether and when the Court grants necessary
25 approvals, orders notice to Aggrieved Employees, and sets further hearings, if any. The schedule may
26 also be modified to correct clerical errors and to reflect the provisions in the Agreement as described
27 above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures
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as expeditiously as reasonably practicable. The schedule for notice and payment procedures carrying out the Agreement is as follows.

Last day for Defendants to provide Claims Administrator with Aggrieved Employee information	7 calendar days after Final Approval Date
Last day for Defendants to fund Gross Settlement Amount	21 calendar days after Final Approval Date
Last day for Claims Administrator to calculate and report to Parties the Net Settlement Amount, PAGA Payment, and Claim Amounts for Aggrieved Employees	Within 7 calendar days of receiving Aggrieved Employee information
Last day for Claims Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days of receiving the Gross Settlement Amount
Last day for Claims Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, PAGA Payment, Claims Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days of receiving the Gross Settlement Amount
Last day for Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Aggrieved Employees
Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

9. MISCELLANEOUS TERMS

9.1 Dismissal and Retention of Jurisdiction to Enforce: Upon the Final Approval Date, the Released PAGA Claims will be dismissed with prejudice, with the Court to retain jurisdiction over the parties to enforce the terms therein pursuant to Civil Procedure Code section 664.6. The prevailing party in any action to enforce the terms of the Agreement shall be entitled to reasonable attorneys' fees and

costs. The Parties agree to meet and confer in good faith to resolve any issue before any such motion for attorney's fees and costs is filed.

9.2 Additional Pay Period Contingency: Defendants have represented that there are no more than 1,314 pay periods during the PAGA Claim Period. In the event the number of pay periods during the PAGA Claim Period is more than 1,445 (*i.e.*, greater than 10% more than 1,314), then the Gross Settlement Amount shall be increased proportionally by the pay periods in excess of 1,314, multiplied by the pay period value. For example, if there were 11,900 pay periods represented to exist during the PAGA Claim Period, but there are actually 15,000 pay periods in the PAGA Claim Period, and the actual pay period value is \$5.00 per pay period, Defendants would have to increase the Gross Settlement Amount by \$15,500.00 (15,000 pay periods – 11,900 pay periods = 3,100 pay periods x \$5.00/pay period).

9.3 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other action as may reasonably be necessary to fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by Court order, or otherwise, to effectuate this Agreement and the terms set forth herein. This may include modifying and/or resubmitting the Agreement for approval. Plaintiff's Counsel shall be responsible for drafting the court approval paperwork. All parties agree to act immediately and diligently to perform their obligations under this Agreement, including the review and approval of settlement documents, such that there are no substantial delays in seeking court approval or administration of this settlement. Plaintiff's Counsel shall endeavor to file a motion for approval of this settlement within 60 days of the date this Agreement is signed. Plaintiff's Counsel shall provide Defendants' Counsel with a draft approval motion within 1 week after this Agreement is fully executed. Defendants' Counsel will provide comments and/or proposed revisions within 1 week after receipt of the draft motion.

9.4 No Admission of Liability: Neither the acceptance nor the performance by Defendants of the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the

Complaint, the representative character of the Action, the validity of any of the claims that were or could have been asserted by Plaintiff and/or Aggrieved Employees in the Action, or of any liability or guilt of Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Aggrieved Employees, or any other person, and Defendants have specifically disclaimed any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Aggrieved Employees, or any other person. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation.

9.5 Notices: Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States certified mail, return receipt requested, addressed as follows:

To the Plaintiff:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda Law Corp.
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624

To Defendants:

Jacob Flesher
Flesher Schaff & Schroeder, Inc.
2202 Plaza Drive
Rocklin, CA 95765
Telephone: (916) 672-6558

9.6 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

9.7 Binding Effect of Agreement: The Parties, by signing this Agreement, are bound by the terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the terms of this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, Claims Administrators, successors, and assigns.

1 9.8 Attorneys' Fees and Costs Limitations: Neither Plaintiff's Counsel nor any other attorneys
2 acting for, or purporting to act for, Aggrieved Employees, or Plaintiff, may recover or seek to recover any
3 amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except as
4 expressly provided herein.

5 9.9 No Modifications: This Agreement may not be changed, altered, or modified, except in
6 writing signed by the Parties hereto and approved by the Court. This Agreement may not be discharged
7 except by performance in accordance with its terms.

8 9.10 Counterparts: This Agreement shall become effective upon its execution by all of the
9 undersigned. Plaintiff, Plaintiff's Counsel, Defendants and Defendants' Counsel may execute this
10 Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each
11 had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the
12 same force and effect of originals.

13 9.11 Choice of Law: The Agreement and the exhibits hereto shall be considered to have been
14 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
15 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
16 with, and governed by, the substantive laws of the State of California without giving effect to that State's
17 choice of law principles.

18 9.12 Headings and Captions: Paragraph titles or captions contained in the Agreement are
19 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the
20 scope of this Agreement, or any provision thereof.

21 9.13 No Retaliation or Discouragement: The Parties agree they will take no action that could
22 be construed as retaliation against any Aggrieved Employees for participating in this settlement.

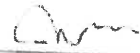
23 9.14 Integrated Agreement: This Agreement sets forth the entire understanding between the
24 Parties with regard to any and all material terms or otherwise and supersedes any and all prior agreements,
25 oral or written, pertaining to the subject matter hereof. Each party acknowledges that there is no
26 representation, inducement, promise or agreement which has been made, orally or otherwise, by the other
27 party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this
28

1 Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are
2 fully understood and voluntarily accepted by the Parties.

3 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
4 attorneys, as of the day and year herein set forth.

5 **For Plaintiff:**

6 Date: 5/10/2021

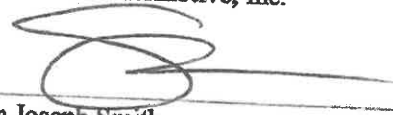

Jose Hurtado

8 **FOR Defendants:**

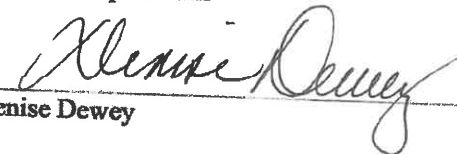
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10 Date: 5/18/2021

By: 
For JS Folsom Automotive, Inc.

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13 Date: 5/18/2021

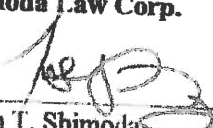

Clifton Joseph Smith

14
15 Date: 5/18/2021


Denise Dewey

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18
19 **APPROVED AS TO FORM**

20
21 Dated: 5/10/21

Shimoda Law Corp.
By: 
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff and Aggrieved
Employees

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APPROVED AS TO FORM

LAW OFFICES OF JOHN A. BRITTON
INC.

Dated: _____

By: _____
John A. Britton
Attorney for Defendants

APPROVED AS TO FORM

FLESHER SCHAFF & SCHROEDER, INC.

Dated: _____

By:  _____
Jacob Flesher
Attorney for Defendants

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APPROVED AS TO FORM

Dated: 5-18-21

LAW OFFICES OF JOHN A. BRITTON
INC.

By: 
John A. Britton
Attorney for Defendants

APPROVED AS TO FORM

Dated: _____

FLESHER SCHAFF & SCHROEDER, INC.

By: _____
Jacob Flesher
Attorney for Defendants

Exhibit 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JOSE HURTADO,

Plaintiff,

vs.

JS FOLSOM AUTOMOTIVE, INC., et al.,

Defendants.

Case No. 34-2020-00284813

**NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

TO: All non-exempt employees employed by Defendants from June 17, 2019 to _____ (the "Aggrieved Employees")

This Notice is being provided to you to inform you of a Private Attorney General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Hurtado v. JS Folsom Automotive, Inc., et al.*, Sacramento County Superior Court, Case No. 34-2020-00284813, filed August 25, 2020 (the "Action"). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above.

In the Action, Plaintiff Jose Hurtado ("Plaintiff") sought to obtain civil penalties, fees, and costs on behalf of himself and Aggrieved Employees. Plaintiff alleged that JS Folsom Automotive, Inc., Clifton Joseph Smith and Denise Dewey ("Defendants") violated California law by failing to pay overtime, failing to pay minimum wages, failing to provide meal and rest periods, failing to provide accurate wage statements, failing to pay final wages, and failing to provide paid sick leave. Defendants have denied all of Plaintiff's allegations.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendants have denied engaging in any unlawful conduct in any respect and further dispute all of Plaintiff's allegations in the Action. By entering into the PAGA Settlement, Defendants do not admit any liability to Plaintiff or to any other current or former employees, and Defendants do not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees, has occurred.

Plaintiff filed a notice with the California Labor and Workforce Development Agency ("LWDA") to exhaust administrative remedies and pursue claims under the Private Attorneys General Act, Cal. Lab. Code §§ 2698 *et seq.* predicated on violations of Labor Code sections 510, 1194, 1197.1, 226.7, 512, 226, 226.3, 201, 202, 203, 256, 558, 558.1, 246, 246.5 and 248.5. The scope of the PAGA Settlement includes all of the Aggrieved Employees for the time period identified above. In exchange for the PAGA Settlement, Plaintiff has agreed to waive any and all liability for violation of the PAGA based on violations of the Labor Code sections above, as alleged in the Action. This waiver shall apply to all Aggrieved Employees, including you. However, the waiver does not extend to any PAGA claims outside of those asserted in the Action or claims arising outside of the June 17, 2019 to _____, time period.

Under the terms of the Settlement, Defendants have agreed to pay a Gross Settlement Amount of \$125,000.00 to resolve the PAGA claims alleged in the Action ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount were sums approved by the Court for attorneys' fees of \$43,750.00, attorneys' costs in the amount of \$_____, the fees and expenses of the Claims Administrator in the amount of \$_____, which will result in a "Net Settlement Amount" of \$_____ for distribution between Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$_____) is being paid to the LWDA and

25% of the Net Settlement Amount (\$ _____) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between June 17, 2019 to _____ and dividing that number by the number of pay periods worked for all Aggrieved Employees between June 17, 2019 to _____, and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiff and/or Defendants.

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda Law Corp.
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Jacob Flesher
Flesher Schaff & Schroeder, Inc.
2202 Plaza Drive
Rocklin, CA 95765
Telephone: (916) 672-6558
On behalf of Defendants

Exhibit B

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 **Shimoda Law Corp.**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff JOSE HURTADO

FILED/ENDORSED

AUG 25 2020

By: L. Stewart
Deputy Clerk

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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JOSE HURTADO,

Plaintiff,

vs.

JS FOLSOM AUTOMOTIVE, INC., a
Delaware Corporation;
FOLSOM BUICK-PONTIAC-GMC, INC., a
Delaware Corporation;
CLIFTON JOSEPH SMITH, an individual;
DENISE DEWEY, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00284813

COMPLAINT FOR CIVIL PENALTIES:

1. Private Attorneys General Act

FILED BY FAX

Plaintiff JOSE HURTADO ("Plaintiff") hereby files this Complaint against Defendants JS FOLSOM AUTOMOTIVE, INC., a Delaware Corporation; FOLSOM BUICK-PONTIAC-GMC, INC., a Delaware Corporation; CLIFTON JOSEPH SMITH, an individual; DENISE DEWEY, an individual; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff allege the following:

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CLASS ACTION COMPLAINT

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INTRODUCTION

1. This is a Private Attorneys General Act ("PAGA") lawsuit brought by Plaintiff for failure to pay overtime wages, failure to pay minimum wages, failure to provide meal periods or pay premiums in lieu thereof, failure to provide rest periods or pay premiums in lieu thereof, failure to provide accurate wage statements, failure to pay final wages, failure to provide paid sick leave, and violation of Labor Code sections 558 and 558.1.

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JURISDICTION AND VENUE

2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to California Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code, California Business and Professions Code, and Wage Order No. 4.

3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), 395.2 and 395.5, in that Defendants reside in Sacramento County. In addition, some of the wrongful acts and violations of law asserted herein occurred within Sacramento County, and Defendants' obligation to pay wages arose in Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

4. Plaintiff has sought permission pursuant to California Labor Code section 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3, Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency ("LWDA") on approximately June 17, 2020. Plaintiff provided facts and legal bases for his claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The June 17, 2020 notice was also sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf of himself and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).

1 Aggrieved Employees includes but is not limited to the following: all non-exempt employees who are
2 currently working or have worked for Defendants from June 17, 2019 up to the present date.

3 **PARTIES**

4 5. JOSE HURTADO is an individual over the age of eighteen (18) and is a resident of
5 the State of California.

6 6. On information and belief, Plaintiff alleges, JS FOLSOM AUTOMOTIVE, INC., is
7 now and/or at all times mentioned in this Complaint was a Delaware Corporation and the owner and
8 operator of an industry, business and/or facility doing business in the State of California.

9 7. On information and belief, Plaintiff alleges, FOLSOM BUICK-PONTIAC-GMC,
10 INC., is now and/or at all times mentioned in this Complaint was a Delaware Corporation and the
11 owner and operator of an industry, business and/or facility doing business in the State of California.

12 8. Plaintiff is informed and believes, and thereupon allege(s), that CLIFTON JOSEPH
13 SMITH, is an individual over the age of eighteen (18) and is a resident of the State of California.
14 Plaintiff further allege(s) that CLIFTON JOSEPH SMITH, is an owner, director, officer, and/or
15 managing agent of JS FOLSOM AUTOMOTIVE, INC. and FOLSOM BUICK-PONTIAC-GMC,
16 INC. responsible for causing the violations outlined in this Complaint. As such CLIFTON JOSEPH
17 SMITH is individually liable pursuant to California Labor Code section 558.1.

18 9. Plaintiff is informed and believes, and thereupon allege(s), that DENISE DEWEY, is
19 an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff
20 further allege(s) that DENISE DEWEY, is an owner, director, officer, and/or managing agent of JS
21 FOLSOM AUTOMOTIVE, INC. and FOLSOM BUICK-PONTIAC-GMC, INC. responsible for
22 causing the violations outlined in this Complaint. As such DENISE DEWEY is individually liable
23 pursuant to California Labor Code section 558.1.

24 10. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
25 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
26 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
27 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
28 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within

1 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
2 Plaintiff.

3 11. At all times mentioned herein, each Defendant was the agent or employee of each of the
4 other Defendants and was acting within the course and scope of such agency or employment. The
5 Defendants are jointly and severally liable to Plaintiff.

6 12. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
7 were members of and/or engaged in a joint employment, joint venture, partnership and common
8 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
9 joint venture, partnership and common enterprise.

10 13. Defendants, and each of them, now and/or at all times mentioned in this Complaint
11 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

12 14. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
13 wrongs, complaints, injuries and/or damages alleged in this Complaint.

14 GENERAL ALLEGATIONS

15 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully
16 set forth herein.

17 16. Defendants operate several car dealerships within California. Plaintiff worked for
18 Defendants as a non-exempt employee and regularly worked over eight (8) hours a day and forty (40)
19 hours a week. Plaintiff and Aggrieved Employees received non-discretionary remuneration in addition
20 to their basic hourly rate of pay. For example, Plaintiff and Aggrieved Employees were paid specified
21 amounts per units/vehicles sold. However, Defendants did not incorporate the value of the non-
22 discretionary piece rate pay and other non-discretionary remuneration into Plaintiff's and Aggrieved
23 Employees' regular rates of pay for the purpose of paying overtime and paid sick time. This caused
24 Plaintiff and similarly situated employees to be deprived of all overtime and paid sick time due and
25 owing to them as they worked overtime and took sick days, but were not paid the additional wages that
26 would have resulted by incorporating the value of all non-discretionary remuneration into the regular
27 rate of pay.

28 //

1 17. Defendants also failed to authorize and permit Plaintiff and Aggrieved Employees to take
2 all meal and rest periods owed to them, including first meal periods before the completion of their fifth
3 hour of work, and second meal periods and third rest periods when Plaintiff and Aggrieved Employees
4 worked over ten (10) hours in a shift. Defendants would also force Plaintiff and Aggrieved Employees
5 to clock out for meal periods they did not receive. Defendants never paid Plaintiff and Aggrieved
6 Employees any meal or rest period premiums. This practice also resulted in unpaid minimum and
7 overtime wages.

8 18. These unlawful practices caused Defendants to issue Plaintiff and Aggrieved Employees
9 paystubs that did not correctly itemize the applicable rates of pay in effect for all hours worked, failed to
10 identify the number of units sold and their value, failed to itemize the number of meal and rest period
11 premiums owed, and did not accurately state all gross and net wages earned. Similarly, Plaintiff and
12 Aggrieved Employees had unpaid overtime, minimum wages, meal and rest period premiums, and sick
13 leave pay as a result of Defendants' practices. These amounts remained unpaid at the time of Plaintiff
14 and Aggrieved Employees' separation and remain unpaid to this date.

15 19. At all times during Plaintiff's and Aggrieved Employees' employment, Clifton Joseph
16 Smith and Denise Dewey were owners, directors, officers, and/or managing agents of Defendants and
17 therefore had control over Plaintiff's and Aggrieved Employees' wages, including creating and
18 implementing the working conditions complained of herein. Clifton Joseph Smith and Denise Dewey
19 also had the authority to hire and fire employees; impose discipline upon employees; and train
20 employees.

21 **CAUSE OF ACTION**

22 **FIRST CAUSE OF ACTION**
23 **PRIVATE ATTORNEYS GENERAL ACT**
24 **(As to all Defendants)**

25 20. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 19 as though fully
26 set forth herein.

27 21. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
28 following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated
current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

22. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

23. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

24. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

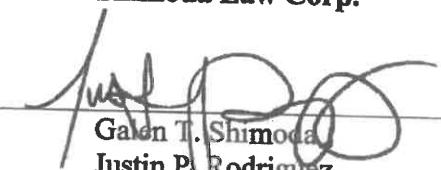
1. A jury trial;
2. As to the First Cause of Action:
 - a. For civil penalties as provided for in the Labor Code for each enumerated violation;
 - b. For those Labor Code sections, the violation of which there is no civil penalty

1 provided, the default penalty provided in Labor Code section 2699(f): for any
2 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
3 period; For any subsequent violation, two hundred dollars (\$200) for each
4 aggrieved employee per pay period;

- 5 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
6 d. For any other remedies as allowed by law and/or deemed appropriate by the
7 Court;

8
9 Dated: August 24, 2020

Shimoda Law Corp.

10
11 By: 

12 Galen T. Shimoda
13 Justin P. Rodriguez
14 Brittany V. Berzin
15 Attorney for Plaintiff
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Exhibit C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #200
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

June 17, 2020

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Hurtado v. Folsom Buick-GMC*

Dear Labor Commissioner,

As counsel for Attorneys for Jose Hurtado ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

JS Folsom Automotive, Inc.
12640 Auto Mall Circle
Folsom, CA 95630

Folsom Buick Pontiac Gmc
12640 Auto Mall Circle
Folsom, CA 95630

Clifton Joseph Smith
12640 Auto Mall Circle
Folsom, CA 95630

Denise Dewey
12640 Auto Mall Circle
Folsom, CA 95630

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against JS Folsom Automotive, Inc., Folsom Buick Pontiac GMC, Clifton Joseph Smith, and Denise Dewey ("Defendants"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: All non-exempt employees who are currently working or have worked for Defendants within the applicable statute of limitations up to the present date. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*,



23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Defendants operate several car dealerships within California. Plaintiff worked for Defendants as non-exempt employees and regularly worked over eight (8) hours a day and forty (40) hours a week. Plaintiff and Aggrieved Employees received non-discretionary remuneration in addition to their basic hourly rate of pay. For example, Plaintiff and Aggrieved Employees were paid specified amounts per units/vehicles sold. However, Defendants did not incorporate the value of the non-discretionary piece rate pay and other non-discretionary remuneration into Plaintiff's and Aggrieved Employees' regular rates of pay for overtime and sick leave pay purposes. This caused Plaintiff and similarly situated employees to be deprived of all overtime and sick leave pay due and owing as they worked overtime and took sick days, but were not paid the additional wages that would have resulted by incorporating the value of all non-discretionary remuneration into the regular rate of pay.

Defendants also failed to authorize and permit Plaintiff and Aggrieved Employees to take all meal and rest periods owed to them, including first meal periods before the completion of their fifth hour of work, and second meal periods and third rest periods when Plaintiff and Aggrieved Employees worked over ten (10) hours in a shift. Defendants would also force Plaintiff and Aggrieved Employees to clock out for meal periods they did not receive. Defendants never paid Plaintiff and Aggrieved Employees any meal or rest period premiums. This practice also resulted in unpaid minimum and overtime wages.

These unlawful practices caused Defendants to issue Plaintiff and Aggrieved Employees paystubs that did not correctly itemize the applicable rates of pay in effect for all hours worked, failed to identify the number of units sold and their value, failed to itemize the number of meal and rest period premiums owed, and did not accurately state all gross and net wages earned. Similarly, Plaintiff and Aggrieved Employees had unpaid overtime, minimum wages, meal and rest period premiums, and sick leave pay as a result of Defendant's practices. These amounts remained unpaid at the time of Plaintiff and Aggrieved Employees' separation and remain unpaid to this date.

At all times during Plaintiff's and Aggrieved Employees' employment, Clifton Joseph Smith and Denise Dewey were owners, directors, officers, and/or managing agents of Defendants and therefore had control over Plaintiff's and Aggrieved Employees' wages, including creating and implementing the working conditions complained of herein. Clifton Joseph Smith and Denise Dewey also had the authority to hire and fire employees; impose discipline upon employees; and train employees.



B. ALLEGATIONS AND CHARGES

Count 1 – Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count 2 – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 4, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

Count 3 - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 4, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 4, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

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Count 4 – Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 4, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count 5 – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee . . .” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count 6 – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including overtime, minimum wages, used sick pay at the appropriate rate of pay, and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count 7 – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer



to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants agents, violated Plaintiff and Aggrieved Employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Clifton Joseph Smith and Denise Dewey were officers, directors, shareholders, and/or managing agents of Defendants responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count 8 – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: _____

Justin P. Rodríguez

JPR

cc: Client via e-mail

1 *Hurtado v. Folsom Buick-GMC*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Caitlyn A. Lopez, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On June 17, 2020, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

9

10 JS Folsom Automotive, Inc. 12640 Auto Mall Circle Folsom, CA 95630	Folsom Buick Pontiac Gmc 12640 Auto Mall Circle Folsom, CA 95630
13 Clifton Joseph Smith 12640 Auto Mall Circle Folsom, CA 95630	Denise Dewey 12640 Auto Mall Circle Folsom, CA 95630

15

16 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
17 and processing of correspondence for mailing with the United States Postal
18 Service and that each day's mail is deposited with the United States Postal
19 Service that same day in the ordinary course of business. On the date set forth
20 above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Sacramento, California, addressed as set forth above.

21 [] [By Personal Service] By personally delivering a true copy thereof to the office
of the addressee above.

22 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
23 personally delivered via the following overnight courier service: _____.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct, and that this declaration was executed on June 17, 2020, at Elk Grove, California.

26
27
28 
Caitlyn A. Lopez

Exhibit D



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Class Action Settlement Administration

Estimate #: 13216
Estimate Date: 4/22/2021
Prepared By: Kimberly Sutherland
Direct Dial #: 321-223-5067
Email: ksutherland@simpluris.com

Attorney
Attorney/Client: Justin Rodriguez
Firm: Shimoda Law
Email: <jrodriguez@shimodalaw.com>

Defense Attorney
Attorney/Client:
Firm:
Email:

Case Name: Distribution

Not to Exceed Fee: \$3,000

Terms:

1) Estimated Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.

Total Possible Class Size: 95
Response Rate: 0%
Mailing Document Language: English
Reminder Post Card: No
Unclaimed Funds: State
Undeliverable Rate: 25%
Call Rate:
Redistribution: None
States: One

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$75.00	1	\$75.00
Database Manager - Initial Data Analysis	\$140.00	1	\$140.00
Total			\$215.00

Distribution

Setup a Disbursement Account

Print & Mail Checks to Class Members- 1099's-- File Reports with Appropriate Federal & State Taxing Authorities

Account Management & Reconciliation.

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	1	\$140.00
Disbursement Manager - Data Validation	\$75.00	1	\$75.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Mailing Supervisor	\$50.00	2	\$100.00
NCOA	\$25.00	1	\$25.00
Print & Mail-Check, 1099/W-2/ 1- Page notice included	\$5.00	95	\$475.00
Postage	\$0.55	95	\$52.25
Process Returned Checks	\$0.50	19	\$9.50
Skip Trace Search Undeliverable Checks	\$5.00	19	\$95.00
Remail Checks	\$5.00	19	\$95.00
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$250.00	1	\$250.00
QSF Reporting/Declaration	\$300.00	1	\$300.00
QSF Annual Tax Preparation Fee, 2021	\$750.00	1	\$750.00
Reissuing Checks/Mailing	\$5.00	1	\$5.00
Reissuing W2s/1099s	\$5.00	1	\$5.00
Escheat management-State	\$75.00	1	\$75.00
Disbursement Manager	\$125.00	1	\$125.00
Total			\$3,126.75



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Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Class Action Settlement Administration

Case Wrap Up

Send Final Reports to Counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	1	\$125.00
Clerical-Clean Up Any Misc	\$50.00	1	\$50.00
Project Manager-Wrap-up Final Issues	\$125.00	1	\$125.00
Total			\$300.00

Postage \$52.25

Total Case Costs \$3,641.75

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 - Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 - Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

Exhibit E

Page 1 of 2

25% of the Net Settlement Amount (\$ _____) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between June 17, 2019 to _____ and dividing that number by the number of pay periods worked for all Aggrieved Employees between June 17, 2019 to _____, and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiff and/or Defendants.

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda Law Corp.
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Jacob Flesher
Flesher Schaff & Schroeder, Inc.
2202 Plaza Drive
Rocklin, CA 95765
Telephone: (916) 672-6558
On behalf of Defendants

Exhibit F

Exhibit G

Entered	Description	Amount
6/5/2020	Payment for Records - Sacramento Court Searches - both Plaintiff and Defendant	\$2.00
6/17/2020	Payment to L WDA - PAGA Filing Fee	\$75.00
6/17/2020	Certified Mail - PAGA Letter to Employers	\$16.80
7/1/2020	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Westlaw Legal Research Fees	\$500.00
8/24/2020	Service Fee to Court - Complaint	\$40.00
8/24/2020	Payment to Court - Complaint Fee Superior Court	\$435.00
9/25/2020	ALS Service Fee - Folsom Buick-Pontiac GMC	\$55.90
9/25/2020	ALS Service Fee - JS Folsom Automotive	\$30.90
10/28/2020	Priority Mail - Notice and Acknowledgement to Opposing Counsel	\$7.55
11/30/2020	Payment for Records - PRA Documents	\$1.33
3/8/2021	Mediation - Mediation Fee to Judicate West	\$3,000.00
4/5/2021	Mediation Damages Analysis - Berger Consulting	\$2,100.00
4/8/2021	Mediation - Attorney Meal	\$38.11
Anticipated	Payment to Court - PAGA Approval Motion	\$60.00
Anticipated	Service Fee to Court - PAGA Approval Motion	\$40.00
Anticipated	UPS to OC - PAGA Approval Motion	\$27.00
Anticipated	Service Fee to Court - Case Management Conference Statement	\$40.00
Anticipated	Service Fee to Court - Compliance Declaration	\$40.00

Total: \$6,509.59