

Joseph Lavi, Esq. (SBN 209776)
Email: jlavi@lelawfirm.com
Vincent C. Granberry, Esq. (SBN 276483)
Email: vgranberry@lelawfirm.com
Courtney M. Miller, Esq. (SBN 327850)
Email: cmiller@lelawfirm.com
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001

Attorneys for Plaintiff CHRIS BONSANGUE

Nicky Jatana (Bar No. 197682)
Connie L. Chen (Bar No. 275649)
JACKSON LEWIS P.C.
725 South Figueroa Street, Suite 2500
Los Angeles, California 90017
Telephone: (213) 689-0404
Facsimile: (213) 689-0430
Nicky.Jatana@jacksonlewis.com
Connie.Chen@jacksonlewis.com

Attorneys for Defendants
FERRELLGAS, INC. and
FERRELLGAS, L.P. d/b/a BLUE RHINO

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHRIS BONSANGUE, on behalf of
himself other similarly situated drivers,

Plaintiff,

vs.

FERRELLGAS, INC.; FERRELLGAS,
L.P.; BLUE RHINO LLC; and DOES 1
to 100, inclusive,

Defendants.

CASE NO.: 2:20-cv-11169-FMO-RAO

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE
BETWEEN PLAINTIFF, ON BEHALF OF
HIMSELF AND ALL OTHERS
SIMILARLY SITUATED AND
AGGRIEVED, AND DEFENDANT**

Complaint Filed: October 2, 2020

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Joint Stipulation of Class Action Settlement (“Agreement” or “Settlement
3 Agreement”) is made and entered into by and between Plaintiff Chris Bonsangue
4 (“Plaintiff” or “Class Representative”), as an individual and on behalf of all others
5 similarly situated and aggrieved, and Defendant Ferrellgas, Inc. (“Defendant”)
6 (collectively with Plaintiff, the “Parties”).

7 This settlement shall be binding on Plaintiff and the settlement classes and
8 aggrieved employees Plaintiff purports to represent and (i) Defendant; (ii) each of
9 Defendant’s respective past, present and future parents, subsidiaries, and affiliates
10 including, without limitation, any corporation, limited liability company, partnership,
11 trust, foundation, and non-profit entity which controls, is controlled by, or is under
12 common control with Defendant; (iii) the past, present and future shareholders, directors,
13 officers, agents, employees, attorneys, insurers, members, partners, managers,
14 contractors, agents, consultants, representatives, administrators, payroll service
15 providers, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of
16 any of the foregoing; and (iv) any individual or entity which could be jointly liable with
17 any of the foregoing, subject to the terms and conditions hereof and the approval of the
18 Court.

19 **RECITALS**

20 1. On October 2, 2020, Plaintiff filed a civil Complaint against Defendant,
21 Ferrellgas, L.P. and Blue Rhino LLC in the Los Angeles County Superior Court entitled
22 *Chris Bonsangue, on behalf of himself and other similarly situated drivers, v. Ferrellgas,*
23 *Inc., et al.*, Case Number 20STCV38208, alleging the following claims: (1) failure to pay
24 wages for all hours worked at minimum wage, (2) failure to authorize or permit meal
25 periods, (3) failure to authorize or permit rest periods, (4) failure to provide complete and
26 accurate wage statements, (5) failure to timely pay all earned wages and final paychecks
27 due at time of separation of employment, and (6) unfair business practices on behalf of the
28 following putative classes:

- 1 a. Minimum Wage Class: All current and former hourly non-exempt
2 drivers employed by Defendant in California at any time from the four
3 (4) years prior to the filing of the initial Complaint in this action and
4 through the date notice is mailed to a certified class who were not paid
5 at least minimum wage for all time they were subject to Defendant's
6 control.
- 7 b. Meal Period Class: All current and former hourly non-exempt drivers
8 employed by Defendant in California at any time from the four (4) years
9 prior to the filing of the initial Complaint in this action and through the
10 date notice is mailed to a certified class who worked more than five (5)
11 hours yet Defendant failed to authorize or permit a duty-free
12 uninterrupted meal period of no less than thirty (30) minutes for each
13 five-hour period of work.
- 14 c. Rest Period Class: All current and former hourly non-exempt drivers
15 employed by Defendant in California at any time from the four (4) years
16 prior to the filing of the initial Complaint in this action and through the
17 date notice is mailed to a certified class who worked shifts of at least
18 three-and-a-half (3.5) hours who did not receive all required duty-free
19 rest periods of a net ten (10) minutes for every four (4) hours worked or
20 major fraction thereof.
- 21 d. Wage Statement Class: All current and former hourly non-exempt
22 drivers employed by Defendant in California at any time within the one
23 (1) year prior to the filing of the initial Complaint in this action and
24 through the date notice is mailed to a certified class who received
25 inaccurate or incomplete wage and hour statements.
- 26 e. Waiting Time Class: All current and former hourly non-exempt drivers
27 employed by Defendant in California at any time within the three (3)
28 years prior to the filing of the initial Complaint in this action and through

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1 the date notice is mailed to a certified class who did not receive payment
2 of all unpaid wages upon separation of employment within the statutory
3 time period.

4 2. On December 9, 2020, Defendant and Ferrellgas L.P. d/b/a Blue Rhino filed
5 and served their respective Answers to the Complaint. On December 9, 2020, the case was
6 removed to the United States District Court, Central District of California as Case No. CV
7 20-11169 FMO (RAOx) (the "Action").¹

8 3. On January 21, 2021, Plaintiff filed a Notice of Dismissal Pursuant to Federal
9 Rules of Civil Procedure 41(a) or (c) dismissing Blue Rhino LLC from the Action without
10 prejudice. (Docket No. 15.)

11 4. On February 19, 2020, Plaintiff filed a civil Complaint against Defendant
12 and Ferrellgas, L.P. in the Los Angeles County Superior Court entitled *Chris Bonsangue,*
13 *on behalf of himself and all other current and former aggrieved California-based hourly*
14 *non-exempt drivers, v. Ferrellgas, Inc., et al.,* Case Number 21STCV06688, alleging single
15 cause of action for: Civil Penalties Pursuant to the Private Attorneys General Act of 2004
16 ("PAGA") (the "PAGA Action").²

17 5. On April 12, 2021, Plaintiff filed a Stipulation for Dismissal Without
18 Prejudice of Defendant Ferrellgas, L.P. Only in the Action. (Docket No. 20.)

19 6. On May 17, 2021, Defendant filed and served its Answer to Plaintiff's
20 Complaint in the PAGA Action. On May 24, 2021, Ferrellgas L.P. d/b/a Blue Rhino was
21 dismissed from the PAGA Action without prejudice pursuant to the parties' Stipulation
22 and [Proposed] Order.

23 7. Plaintiff intends to file a First Amended Complaint ("FAC") in the Action
24 adding a Seventh Cause of Action for Civil Penalties Pursuant to the Private Attorneys

25 _____
26 ¹ As set forth in the removal papers, Blue Rhino, LLC was merged into Ferrellgas, L.P. in 2004 and does not exist as a
separate entity.

27 ² On September 29, 2020, Plaintiff exhausted his administrative remedies pursuant to California Labor Code § 2699, *et seq.* by
28 providing notice to the Labor and Workforce Development Agency ("LWDA"). Plaintiff did not receive a response from the
LWDA.

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1 General Act of 2004 (“PAGA”). A copy of the proposed FAC is attached hereto as **Exhibit**
2 **A**.

3 8. Plaintiff will attach a copy of the proposed FAC to the Motion for Preliminary
4 Approval and request leave of the Court to file the FAC. Upon filing, Plaintiff will dismiss
5 the PAGA Action with prejudice. Defendant will have no obligation to file a responsive
6 pleading to the FAC, unless the Settlement Agreement is rescinded or nullified pursuant to
7 paragraphs 77 or 78 below. In the event that the FAC is filed and the Settlement Agreement
8 is thereafter rescinded or nullified, Defendant will have 30 days from notice of the
9 termination to file a responsive pleading to the FAC.

10 9. Defendant denies all material allegations set forth in the Action and the PAGA
11 Action and has asserted numerous affirmative and other defenses. Notwithstanding, in the
12 interest of avoiding further litigation, the Parties desire to fully and finally settle all actual
13 or potential claims by the Class Members.

14 10. Plaintiff’s counsel in the Action and PAGA Action diligently investigated the
15 proposed Class Members’ claims against Defendant, including any and all applicable
16 defenses and the applicable law. The investigation included, *inter alia*, the exchange of
17 information pursuant to informal discovery methods, review of numerous corporate
18 policies and practices, and review and analysis of voluminous time and payroll records.

19 11. On September 2, 2021, the Parties participated in a mediation with Todd
20 Smith, Esq., a highly respected mediator of wage and hour class and PAGA actions. At
21 the September 2, 2021 mediation, the Parties agreed to the principal terms of a settlement
22 of the Class Action and PAGA Action, which was memorialized in a Confidential
23 Memorandum of Understanding signed by the Parties.

24 12. The settlement discussions before, during and after the mediation were
25 conducted at arm’s length and the settlement is the result of an informed and detailed
26 analysis of Defendant’s alleged potential liability in relation to the costs and risks
27 associated with continued litigation.

28 13. Based on the data and documents produced pursuant to informal discovery, as

1 well as Class Counsel's own independent investigation and evaluation, and the mediator's
2 efforts, Class Counsel believe that the settlement with Defendant for the consideration and
3 on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is
4 in the best interest of the Class Members in light of all known facts and circumstances,
5 including the risk of significant delay and uncertainty associated with litigation, various
6 defenses asserted by Defendant, the sharply contested legal and factual issues involved,
7 and numerous appellate issues.

8 14. This Settlement Agreement is made and entered into by and between Plaintiff,
9 individually and on behalf of all others similarly situated and aggrieved, on the one hand,
10 and Defendant, on the other hand, and is subject to the terms and conditions hereof, and to
11 the Court's approval. The Parties expressly acknowledge that this Agreement is entered
12 into solely for the purpose of compromising significantly disputed claims and that nothing
13 herein is an admission of any liability or wrongdoing by Defendant. If, for any reason the
14 Settlement Agreement is not approved, it will be of no force or effect, and the Parties shall
15 be returned to their original respective positions.

16 **DEFINITIONS**

17 The following definitions are applicable to this Settlement Agreement. Definitions
18 contained elsewhere in this Settlement Agreement will also be effective:

19 11. "Action" means *Chris Bonsangue, on behalf of himself and other similarly*
20 *situated drivers, v. Ferrellgas, Inc., et al.*, United States District Court, Central District of
21 California as Case No. CV 20-11169 FMO (RAOx).

22 12. "Attorneys' Fees and Costs" means attorneys' fees agreed upon by the
23 Parties and approved by the Court for Class Counsel's litigation and resolution of this
24 Action and the PAGA Action, and all costs incurred and to be incurred by Class Counsel
25 in the Action and the PAGA Action, including, but not limited to, costs associated with
26 documenting the Settlement, securing the Court's approval of the Settlement, responding
27 to any objections to the settlement and appeals arising therefrom, administering the
28 Settlement, obtaining entry of a Judgment terminating this Action, and expenses^{BS} for any

1 experts. Class Counsel will request attorneys' fees not in excess of Thirty-Three Percent
2 (33%) of the Maximum Settlement Amount, or up to Sixty-Two Thousand Seven
3 Hundred Dollars (\$62,700). The Attorneys' Fees and Costs will also mean and include
4 the additional reimbursement of Class Counsel's actual costs associated with Class
5 Counsel's litigation and settlement of the Action and PAGA Action per Class Counsel's
6 billing statements, up to Ten Thousand Dollars (\$10,000), subject to the Court's approval.
7 Defendant has agreed not to oppose Class Counsel's request for fees and reimbursement
8 of costs as set forth above.

9 13. "Class Counsel" means Lavi & Ebrahimian, LLP, which will seek to be
10 appointed counsel for the Settlement Class.

11 14. "Class List" means a complete list of all Class Members that Defendant will
12 diligently and in good faith compile from its records and provide to the Settlement
13 Administrator within thirty (30) calendar days after Preliminary Approval of this
14 Settlement. The Class List will be formatted in a readable Microsoft Office Excel
15 spreadsheet and will include Class Members' names, last-known addresses, last-known
16 telephone numbers, social security numbers, and Workweek and pay period data (i.e., the
17 start and end date of employment for each class member for the Settlement Administrator
18 to use in calculating the workweeks and pay periods) during the Class Period.

19 15. "Class Member(s)" or "Settlement Class" means all individuals who are or
20 previously were employed by Defendant in the State of California who worked as a non-
21 exempt driver at any time from October 2, 2016 through November 1, 2021, with the
22 exception of individuals who were employed by Defendant in the position of Driver Bulk
23 & Cylinder, Driver I Cylinder A, Driver I Bulk & Cylinder B, Driver Tank Exchange,
24 and/or Driver II Transport A only, and at no time on or after September 15, 2019, whose
25 claims were released pursuant to the settlement in *Price v. Ferrellgas, Inc.*, Southern
26 District of California Case No. 37-2018-00022075-CU-OE-CTL. The Settlement Class
27 also does not include any other person who previously settled or released any of the
28 claims covered by this Settlement, or any other person who previously was paid or

1 received awards through civil or administrative actions for the claims covered by this
2 Settlement. Defendant represents that there are approximately 29,578 workweeks
3 through September 15, 2021 subject to this Settlement.

4 16. "Class Period" means the period from October 2, 2016 through November
5 1, 2021.

6 17. "Class and PAGA Representative" means Plaintiff Chris Bonsangue, who
7 will seek to be appointed as the representative for the Settlement Class.

8 18. "Class and PAGA Representative Enhancement Payment" means the amount
9 to be paid to Plaintiff in recognition of Plaintiff's effort and work in prosecuting the
10 Action on behalf of Class Members, the PAGA Action, and negotiating the Settlement.
11 Defendant agrees not to dispute that the Class Representative will be paid, subject to
12 Court approval, up to Five Thousand Dollars (\$5,000) from the Maximum Settlement
13 Amount for Plaintiff's services on behalf of the class, subject to the Court granting final
14 approval of this Settlement Agreement and subject to the exhaustion of any and all
15 appeals. Should the Court reduce the Class Representative Enhancement Payment, any
16 such reduction shall revert to the Net Settlement Amount distributed to Participating
17 Class Members.

18 19. "Court" means the United States Strict Court for the Central District of
19 California or any other court taking jurisdiction of the Action and FAC.

20 20. "Defendant" means Ferrellgas, Inc. and (i) each of Defendant's respective
21 past, present and future parents, subsidiaries, and affiliates including, without limitation,
22 any corporation, limited liability company, partnership, trust, foundation, and non-profit
23 entity which controls, is controlled by, or is under common control with Defendant; (ii)
24 the past, present and future shareholders, directors, officers, agents, employees, attorneys,
25 insurers, members, partners, managers, contractors, agents, consultants, representatives,
26 administrators, payroll service providers, fiduciaries, benefit plans, transferees,
27 predecessors, successors, and assigns of any of the foregoing; and (iii) any individual or
28 entity which could be jointly liable with any of the foregoing.

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21. “Effective Date” means the date on which the settlement embodied in this Settlement Agreement shall become effective after all of the following events have occurred: (i) this Settlement Agreement has been executed by all parties and by counsel for the Settlement Class and Defendant; (ii) the Court has given preliminary approval to the Settlement; (iii) notice has been given to the putative members of the Settlement Class, providing them with an opportunity to object to the terms of the Settlement or to opt-out of the Settlement; (iv) the Court has held a formal fairness hearing and entered a final order and judgment certifying the Class and approving this Settlement Agreement; (v) forty (40) calendar days have passed following the Court’s entry of a final order and judgment certifying the Settlement Class, and approving the settlement; and (vi) in the event there are written objections filed prior to the formal fairness hearing which are not later withdrawn or denied, the later of the following events: (a) five (5) business days after the period for filing any appeal, writ or other appellate proceeding opposing the Court’s final order approving the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or (b) five (5) business days after any appeal, writ or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief.

22. “Individual PAGA Settlement Payment” means each PAGA Group Member’s share of the Net PAGA Settlement Amount.

23. “Individual Settlement Payment” means each Participating Class Member’s share of the Net Settlement Amount, to be distributed to the Class Members who do not submit a valid Request for Exclusion.

24. “LWDA Payment” means Seventy-Five Percent (75%), or Fourteen Thousand Two Hundred and Fifty Dollars (\$14,250), of the PAGA Settlement Amount which will be paid to the California Labor and Workforce Development Agency pursuant to PAGA.

25. “PAGA Settlement Amount” means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) and PAGA Group

Members in connection with the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that Nineteen Thousand Dollars (\$19,000) of the Maximum Settlement Amount will be allocated to the resolution of any PAGA Group Members’ claims arising under PAGA (i.e., the PAGA Settlement Amount).

26. “Maximum Settlement Amount” means the maximum settlement amount of One Hundred Ninety Thousand Dollars and Zero Cents (\$190,000.00) to be paid by Defendant in full satisfaction of all claims arising from the Action and PAGA Action, which includes all Individual Settlement Payments to Participating Class Members, the Class Representative Enhancement Payments, Settlement Administration Costs to the Settlement Administrator, the PAGA Settlement Amount, the Attorneys’ Fees and Costs to Class Counsel, and the employer’s share of payroll taxes for the portion of the Net Settlement Amount allocated to wages. This Maximum Settlement Amount has been agreed to by Plaintiff and Defendant based on the aggregation of the agreed-upon settlement value of the claims alleged. In no event will Defendant be liable for more than the Maximum Settlement Amount except as otherwise explicitly set forth herein. The Maximum Settlement Amount is non-reversionary.

27. “Net Settlement Amount” means the portion of the Maximum Settlement Amount remaining after deduction of the approved Class Representative Enhancement Payments, Settlement Administration Costs, PAGA Settlement Amount, Attorneys’ Fees and Costs, and the employer’s share of payroll taxes for the portion of the Net Settlement Amount allocated to wages. The Net Settlement Amount will be distributed to Participating Class Members.

28. “Net PAGA Settlement Amount” means the Twenty-Five Percent (25%), or Four Thousand Seven Hundred and Fifty Dollars (\$4,750), of the PAGA Settlement Amount which will be distributed to PAGA Group Members.

29. “Notice of Objection” means a Class Member’s valid and timely written objection to the Settlement Agreement. For the Notice of Objection to be valid, it must

1 include: (a) the objector's full name, signature, address, telephone number, and the last
2 four digits of the objector's social security number, (b) the dates the objector was
3 employed by Defendant in California, (c) a written statement of all grounds for the
4 objection accompanied by any legal support for such objection, and (d) copies of any
5 papers, briefs, or other documents upon which the objection is based.

6 30. "Notice Packet" or "Notice" means the Notice of Class Action Settlement,
7 substantially in the form attached as **Exhibit B**.

8 31. "PAGA Action" means *Chris Bonsangue, on behalf of himself and all other*
9 *current and former aggrieved California-based hourly non-exempt drivers, v. Ferrellgas,*
10 *Inc., et al.*, Case Number 21STCV06688.

11 32. "PAGA Group Members" means all Class Members who were employed by
12 Defendant during the period from September 29, 2019 through November 1, 2021.

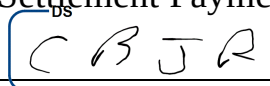
13 33. "Parties" means Plaintiff and Defendant collectively.

14 34. "Participating Class Members" means all Class Members who do not submit
15 valid Requests for Exclusion.

16 35. "Plaintiff" means Plaintiff Chris Bonsangue in the Class Action and PAGA
17 Action.

18 36. "Preliminary Approval" means the Court order granting preliminary
19 approval of the Settlement Agreement.

20 37. "Released Claims" includes all claims under state, federal or local law,
21 whether statutory, common law or administrative law arising out of or related to all claims
22 and allegations made or which could have been made in the Class Action and/or PAGA
23 Action from October 2, 2016 through November 1, 2021, including, but not limited to,
24 allegations of alleged: meal period violations; rest period violations; failure to pay wages;
25 wage statement violations; waiting time penalties; civil penalties, including penalties
26 under the California Private Attorneys General Act of 2004 ("PAGA"); violations of
27 Business and Professions Code section 17200. Further, those Participating Class
28 Members who cash, deposit, or otherwise negotiate their Individual Settlement Payment



1 checks will be deemed to have affirmatively opted in for purposes of the Fair Labor
2 Standards Act (“FLSA”) and to have thereby released all of the Released Parties of all
3 failure to pay wages claims which arose under the FLSA during the Class Period.

4 38. “Released Parties” means: (i) Defendant; (ii) each of Defendant’s past,
5 present and future parents, subsidiaries, divisions, concepts, related and affiliate
6 companies including, without limitation, any corporation, limited liability company,
7 partnership, trust, foundation, and non-profit entity which controls, is controlled by, or is
8 under common control with Defendant; (iii) the past, present and future shareholders,
9 directors, officers, agents, employees, attorneys, insurers, members, partners, managers,
10 contractors, agents, consultants, representatives, administrators, payroll service
11 providers, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of
12 any of the foregoing; and (iv) any individual or entity which could be jointly liable with
13 any of the foregoing.

14 39. “Request for Exclusion” means a timely letter submitted by a Class Member
15 indicating a request to be excluded from the settlement. The Request for Exclusion must:
16 (a) be signed by the Class Member; (b) contain the name, address, telephone number, and
17 the last four digits of the Social Security Number of the Class Member requesting
18 exclusion; (c) clearly state that the Class Member received the Notice, does not wish to
19 participate in the settlement, and wants to be excluded from the settlement; (d) be returned
20 by first class mail or equivalent to the Settlement Administrator at the specified address;
21 and, (e) be postmarked on or before the Response Deadline. The date of the postmark on
22 the return mailing envelope will be the exclusive means to determine whether a Request
23 for Exclusion has been timely submitted. A Class Member who does not request
24 exclusion from the settlement will be deemed a Participating Class Member and will be
25 bound by all terms of the settlement, if the settlement is granted final approval by the
26 Court. The Parties agree that there is no right for any Class Member to opt out or
27 otherwise exclude himself or herself from the settlement of the PAGA claims alleged in
28 the PAGA Action.

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1 40. “Response Deadline” means the deadline by which Class Members must
2 postmark to the Settlement Administrator valid Requests for Exclusion, or file and serve
3 objections to the settlement. The Response Deadline will be forty-five (45) calendar days
4 from the initial mailing of the Notice Packet by the Settlement Administrator, unless the
5 45th day falls on a Sunday or federal holiday, in which case the Response Deadline will
6 be extended to the next day on which the U.S. Postal Service is open. The Response
7 Deadline will be extended fifteen (15) calendar days for any Class Member who is re-
8 mailed a Notice Packet by the Settlement Administrator, unless the 15th day falls on a
9 Sunday or federal holiday, in which case the Response Deadline will be extended to the
10 next day on which the U.S. Postal Service is open. The Response Deadline may also be
11 extended by express agreement between Class Counsel and Defendant. Under no
12 circumstances, however, will the Settlement Administrator have the authority to extend
13 the deadline for Class Members to submit a Request for Exclusion or objection to the
14 settlement.

15 41. “Settlement Administrator” means Simpluris or any other third-party class
16 action settlement administrator agreed to by the Parties and approved by the Court for
17 purposes of administering this settlement. The Parties each represent that they do not
18 have any financial interest in the Settlement Administrator or otherwise have a
19 relationship with the Settlement Administrator that could create a conflict of interest.

20 42. “Settlement Administration Costs” means the costs payable from the
21 Maximum Settlement Amount to the Settlement Administrator for administering this
22 Settlement, including, but not limited to, printing, distributing, and tracking documents
23 for this Settlement, calculating estimated amounts per Class Member, tax reporting,
24 distributing the appropriate settlement amounts, and providing necessary reports and
25 declarations, and other duties and responsibilities set forth herein to process this
26 Settlement, and as requested by the Parties. The Settlement Administration Costs will be
27 paid from the Maximum Settlement Amount, including, if necessary, any such costs in
28 excess of the amount represented by the Settlement Administrator as being the maximum

costs necessary to administer the settlement. The Settlement Administration Costs are currently estimated to be Seven Thousand Five Hundred Dollars (\$7,500). To the extent actual Settlement Administrations Costs are greater than \$7,500, such excess amount will be deducted from the Maximum Settlement Amount.

43. "Workweeks" means the number of weeks of employment for each Class Member as a non-exempt driver during the Class Period. Workweeks are determined by calculating the number of days each Class Member was employed as a non-exempt driver during the Class Period, dividing by seven (7), and rounding up to the nearest whole number.

CLASS CERTIFICATION

44. Solely for purposes of settling the Action, and not for purposes of class certification should the matter not be settled or for any other reason, the Parties stipulate and agree that the requisites for establishing class certification with respect to the Settlement Class have been met and are met. More specifically, the Parties stipulate and agree for purposes of this settlement only that:

(a) The Settlement Class is ascertainable and so numerous as to make it impracticable to join all Class Members;

(b) There are common questions of law and fact including, but not limited to, the following:

i. Whether Defendant violated Labor Code sections 1194 and 1197 by not paying wages at the minimum wage rate for all time that the Minimum Wage Class Members were subject to Defendant's control;

ii. Whether Defendant violated Labor Code sections 512 and 26.7, as well as the applicable Wage Order, by employing the Meal Period Class members without providing all compliant and/or required meal periods and/or paying meal period premium wages;

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iii. Whether Defendant violated Labor Code section 226.7 by employing the Rest Period Class Members without providing all compliance and/or require rest periods and/or paying rest period premium wages;

iv. Whether Defendant failed to provide the Wage Statement Class Members with accurate itemized wage statements at the time they received their itemized statements;

v. Whether Defendant failed to provide the Waiting Time Class Members with all of their earned wages upon separation of employment within the statutory time period;

vi. Whether Defendant committed unlawful business acts or practices within the meaning of Business and Professions Code sections 17200 *et seq.*;

vii. Whether Class Members are entitled to unpaid wages, penalties, and other relief pursuant to their claims;

viii. Whether, as a consequence of Defendant's alleged unlawful conduct, the Class Members are entitled to restitution and/or equitable relief; and

ix. Whether Defendant's affirmative defenses raise any common issues of law or fact as to Plaintiff and as to Class Members as a whole.

Should this Settlement not be approved or be terminated, these stipulations shall be null and void and shall not be admissible, in this or any other action, for any purpose whatsoever.

45. The Class Representative's claims are typical of the claims of the members of the Settlement Class; should this Settlement not be approved or be terminated, this stipulation shall be null and void and shall not be admissible, in this or any other action, for any purpose whatsoever.

46. The Class Representative and Class Counsel will fairly and adequately protect the interests of the Settlement Class; should this Settlement not be approved or be terminated, this stipulation shall be null and void and shall not be admissible, in this or any other action, for any purpose whatsoever.

47. The prosecution of separate actions by individual members of the Settlement Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct; should this Settlement not be approved or be terminated, this stipulation shall be null and void and shall not be admissible, in this or any other action, for any purpose whatsoever.

48. With respect to the Settlement Class, the Class Representative believe that questions of law and fact common to the members of the Settlement Class predominate over any questions affecting any individual member in such Class, and a class action is superior to other available means for the fair and efficient adjudication of the controversy; should this Settlement not be approved or be terminated, this stipulation shall be null and void and shall not be admissible, in this or any other action, for any purpose whatsoever.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

49. Funding of the Maximum Settlement Amount. Within fourteen (14) calendar days after the Effective Date, the Settlement Administrator will provide the Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms of the Settlement. Within twenty-one (21) calendar days after the Settlement Administrator provides the Parties with the accounting of amounts to be paid, Defendant will make a one-time deposit of One Hundred Ninety Thousand Dollars and Zero Cents (\$190,000.00) for payment of all Court approved amounts from the Maximum Settlement Amount into a Qualified Settlement Account to be established by the Settlement Administrator. Within fourteen (14) business days of the funding of the Settlement, the Settlement Administrator will issue payments to (a) Participating Class Members; (b) the Labor and Workforce Development Agency; (c) Plaintiff; (d) PAGA Group Members; (e) Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the settlement.

50. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any

1 application or motion by Class Counsel for Attorneys' Fees and Costs of Thirty-Three
2 Percent (33%) of the Maximum Settlement Amount, or up to Sixty-Two Thousand Seven
3 Hundred Dollars (\$62,700), plus the reimbursement of actual costs and expenses
4 associated with Class Counsel's litigation and settlement of the Action and PAGA Action
5 per Class Counsel's cost records up to Ten Thousand Dollars (\$10,000), both of which
6 will be paid from the Maximum Settlement Amount. In the event that the escalator clause
7 is triggered, and the Maximum Settlement Amount is increased after the Parties'
8 negotiations, Plaintiff shall have at its discretion the option to request attorneys' fees in
9 the amount of 33% of the increased Maximum Settlement Amount, if any.

10 51. Class Representative Enhancement Payment. In recognition of Plaintiff's
11 effort and work in prosecuting the Action and PAGA Action on behalf of Class Members
12 and negotiating the Settlement, Defendant agrees not to oppose or impede any application
13 or motion for a Class Representative Enhancement Payment of up to Five Thousand
14 Dollars (\$5,000) to the Class Representative, subject to the Court's approval. The Class
15 Representative Enhancement Payment, which will be paid from the Maximum Settlement
16 Amount, will be in addition to Plaintiff's Individual Settlement Payment and Individual
17 PAGA Settlement Payment paid pursuant to the Settlement. The Settlement
18 Administrator will issue an IRS Form 1099 for the enhancement payment to the Class
19 Representative, and the Class Representative shall be solely and legally responsible for
20 correctly characterizing this compensation for tax purposes and for paying any taxes on
21 the amount received. The Class Representative agrees to indemnify and hold Defendant
22 harmless from any claim or liability for taxes, penalties, or interest arising as a result of
23 the Class Representative Enhancement Payment. Should the Court reduce the Class
24 Representative Enhancement Payment, any such reduction shall revert to the Net
25 Settlement distributed to Participating Class Members.

26 52. Settlement Administration Costs. The Settlement Administrator will be paid
27 for the reasonable costs of administration of the Settlement and distribution of payments
28 from the Maximum Settlement Amount, which is currently estimated to be Seven

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1 Thousand Five Hundred Dollars (\$7,500). These costs, which will be paid from the
2 Maximum Settlement Amount, will include, *inter alia*, the required tax reporting on the
3 Individual Settlement Payments, the issuing of 1099 IRS Forms, distributing the Notice
4 Packet, calculating and distributing the Maximum Settlement Amount and Attorneys'
5 Fees and Costs, and providing necessary reports and declarations.

6 53. Labor and Workforce Development Agency Payment. Subject to Court
7 approval, the Parties agree that the amount of Nineteen Thousand Dollars (\$19,000.00)
8 of the Maximum Settlement Amount will be designated for satisfaction of Plaintiff's and
9 Class Members' PAGA claims (i.e., the PAGA Settlement Amount). Pursuant to PAGA,
10 Seventy-Five Percent (75%), or Fourteen Thousand Two Hundred and Fifty Dollars
11 (\$14,250), of the PAGA Settlement Amount will be paid to the California Labor and
12 Workforce Development Agency, and Twenty-Five Percent (25%), or Four Thousand
13 Seven Hundred and Fifty Dollars (\$4,750), of the PAGA Settlement Amount will be
14 distributed based on each PAGA Group Member's number of pay periods worked in
15 comparison to the pay periods worked by all PAGA Group Members during the period
16 from September 29, 2019 through November 1, 2021. Each PAGA Group Member will
17 receive an Individual PAGA Settlement Payment regardless of whether they exclude
18 themselves from the class settlement and release. PAGA Group Members will release the
19 Released Claims as they relate to civil penalties pursuant to PAGA.

20 54. Net Settlement Amount. The Net Settlement Amount will be used to satisfy
21 Individual Settlement Payments to Participating Class Members from the Settlement
22 Class in accordance with the terms of this Agreement.

23 55. Acknowledgement of Potential Administration Cost Increases. The Parties
24 hereby acknowledge that Settlement Administration Costs may increase above the current
25 estimate of \$ \$7,500 and that any such additional Settlement Administration Costs will
26 be taken out of the Maximum Settlement Amount. Any portion of the estimated or
27 designated Settlement Administration Costs which are not in fact required to fulfill the
28 total Settlement Administration Costs will become part of the Net Settlement Amount.

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1 56. Individual Settlement Payment Calculations. Individual Settlement
2 Payments will be calculated and apportioned from the Net Settlement Amount based on
3 the Workweeks a Participating Class Member worked during the Class Period. Specific
4 calculations of Individual Settlement Payments will be made as follows:

5 a. The Settlement Administrator will calculate the number of
6 Workweeks per Participating Class Member during the Class Period based on records in
7 Defendant's possession, custody or control. Defendant's Workweek data will be
8 presumed to be correct, unless a particular Class Member proves otherwise to the
9 Settlement Administrator by credible written evidence. All Workweek disputes will be
10 resolved and decided by the Settlement Administrator in consultation with Class Counsel
11 and counsel for Defendant. The Settlement Administrator's decision on all Workweek
12 disputes will be final and non-appealable.

13 b. The Settlement Administrator will calculate the total number of
14 Workweeks for each individual Class Member ("Individual Workweeks"). The
15 Settlement Administrator will calculate the total number of Workweeks for all Class
16 Members during the Class Period ("Class Workweeks").

17 c. To determine each Class Member's "Individual Settlement Payment"
18 the Settlement Administrator will use the following formula: Individual Settlement
19 Payment = (Net Settlement Amount ÷ Class Workweeks) x Individual Workweeks for
20 each individual Participating Class Member. Individual Settlement Payment checks will
21 contain the following printed notice advising Participating Class Members that they are
22 affirmatively opting for purposes of the FLSA by cashing, depositing or otherwise
23 negotiating their Individual Settlement Payment checks: "BY CASHING THIS CHECK
24 YOU ARE AGREEING TO THE TERMS OF THE SETTLEMENT REACHED IN
25 *BONSANGUE V. FERRELLGAS, INC., ET AL.*, CASE NO. 2:20-cv-11169-FMO-RAO,
26 AND AGREE TO OPT-IN TO THE SETTLEMENT AND TO RELEASE CLAIMS
27 UNDER THE FAIR LABOR STANDARDS ACT PURSUANT TO THE
28 SETTLEMENT."

A handwritten signature and initials, possibly "C B J R", are written in blue ink over a blue rectangular stamp that contains the letters "DS".

d. The Net PAGA Settlement Amount will be distributed to PAGA Group Members based on the number of pay periods each of them worked during the period from September 29, 2019 through November 1, 2021 (“Individual PAGA Pay Periods”) compared to the total number of pay periods worked by all PAGA Group Members during the period from September 29, 2019 through November 1, 2021 (“Total PAGA Pay Periods”). To determine each PAGA Group Member’s Individual PAGA Settlement Payment, the Settlement Administrator will use the following formula: Individual PAGA Settlement Payment = Net PAGA Settlement Amount ÷ Total PAGA Pay Periods) x Individual PAGA Pay Periods.

57. Settlement Awards Do Not Trigger Additional Benefits. All settlement awards to Class Members shall be deemed to be paid to such Class Members solely in the year in which such payments actually are received by the Class Members. It is expressly understood and agreed that the receipt of such individual settlement awards will not entitle any Class Member to additional compensation or benefits under any company bonus, commission or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Class Member to any increased retirement, 401K benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement that the individual settlement awards provided for in this Settlement are the sole payments to be made by Defendant to the Class Members, and that the Class Members are not entitled to any new or additional compensation or benefits as a result of having received the individual settlement awards (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 Settlement).

58. Settlement Administration Process. The Parties agree to cooperate in the administration of the settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement.

59. Delivery of the Class List. Within thirty (30) calendar days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator.

60. Notice by First-Class U.S. Mail. Within forty-five (45) calendar days of Preliminary Approval, the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

61. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have between the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to fax or postmark a Request for Exclusion, or file and serve an objection to the Settlement.

62. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet will be substantially in the form attached hereto as **Exhibit B**.

63. Disputed Information on Notice Packets. Class Members will have an opportunity to dispute the information provided in their Notice Packets. To the extent Class Members dispute the number of weeks he/she worked during the Class Period, or the amount of their Individual Settlement Payment, Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Settlement Administrator will evaluate the evidence submitted by the Class Member in

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1 consultation with Class Counsel and counsel for Defendant and will make the final
2 decision as to the Individual Settlement Payment to which the Class Member may be
3 entitled.

4 64. Request for Exclusion Procedures. Any Class Member wishing to opt-out
5 from the Settlement Agreement must sign and postmark a written Request for Exclusion
6 to the Settlement Administrator within the Response Deadline. The date of the postmark
7 on the return mailing envelope will be the exclusive means to determine whether a
8 Request for Exclusion has been timely submitted. All Requests for Exclusion will be
9 submitted to the Settlement Administrator, who will certify jointly to Class Counsel and
10 Defendant's Counsel the Requests for Exclusion that were timely submitted. Any Class
11 Member who submits a Request for Exclusion shall be prohibited from objecting to the
12 Settlement Agreement. The Parties agree that there is no right for any Class Member to
13 opt out or otherwise exclude himself or herself from the Settlement of the PAGA claims
14 in the Action.

15 65. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any
16 Class Member who does not affirmatively opt-out of the Settlement Agreement by
17 submitting a timely and valid Request for Exclusion will be bound by all of its terms,
18 including those pertaining to the Released Claims, as well as any Judgment that may be
19 entered by the Court if it grants final approval to the Settlement.

20 66. Objection Procedures. To object to the Settlement Agreement, a Class
21 Member shall file a valid Notice of Objection with the Settlement Administrator on or
22 before the Response Deadline. The Settlement Administrator shall serve all objections
23 as received on Class Counsel and Defendant's Counsel, as well as file all such objections
24 with the Court. The Notice of Objection shall be signed by the Class Member and contain
25 all information required by this Settlement Agreement. The postmark date of the filing
26 and service will be deemed the exclusive means for determining that the Notice of
27 Objection is timely. At no time will any of the Parties or their counsel seek to solicit or
28 otherwise encourage Class Members to object to the Settlement Agreement or appeal

1 from the Order and Judgment. Class Counsel will not represent any Class Members with
2 respect to any such objections to this Settlement. The Parties agree that there is no right
3 for any Class Member to object to the Settlement of the PAGA claims in the Action.

4 67. Certification Reports Regarding Individual Settlement Payment
5 Calculations. The Settlement Administrator will provide Defendant's counsel and Class
6 Counsel a weekly report which certifies: (a) the number of Class Members who have
7 submitted valid Requests for Exclusion; and (b) whether any Class Member has submitted
8 a challenge to any information contained in their Notice Packet. Additionally, the
9 Settlement Administrator will provide to counsel for both Parties any updated reports
10 regarding the administration of the Settlement Agreement as needed or requested.

11 68. Uncashed Settlement Checks. Any checks issued by the Settlement
12 Administrator to Participating Class Members will expire 180 calendar days from the date
13 the check was issued. Upon the expiration of 180 calendar days, uncashed settlement
14 award checks will not be re-issued, except for good cause and as mutually agreed upon
15 by the Parties in writing. All uncashed checks will be sent to the State of California
16 Unclaimed Property Fund in the name of the employee.

17 69. Certification of Completion. Upon completion of administration of the
18 Settlement, the Settlement Administrator will provide a written declaration under oath to
19 certify such completion to the Court and counsel for all Parties.

20 70. Administration Costs if Settlement Fails. If the Settlement is voided or
21 rejected by the Court, any costs incurred by the Settlement Administrator will be paid
22 equally by the Parties (half by Defendant and half by Class Counsel), unless otherwise
23 specified in this Agreement.

24 71. Treatment of Individual Settlement Payments. All Individual Settlement
25 Payments will be allocated as follows: of each Individual Settlement Payment, 15% will
26 be allocated as alleged unpaid wages, 42.5% will be allocated as alleged unpaid interest,
27 and the remaining 42.5% will be allocated as alleged unpaid civil penalties and
28 reimbursement. The 15% of each Individual Settlement Payment allocated as wages will

1 be reported on an IRS Form W-2 by the Settlement Administrator. The remaining 85%
2 of each Individual Settlement Payment allocated as interest, penalties and reimbursement
3 will be reported on an IRS Form 1099 by the Settlement Administrator. Individual PAGA
4 Settlement Payments will be designated 100% penalties and be reported on an IRS Form
5 1099.

6 72. Administration of Taxes by the Settlement Administrator. The Settlement
7 Administrator will be responsible for issuing to Plaintiff, Participating Class Members,
8 PAGA Group Members, and Class Counsel any W-2, 1099, or other tax forms as may be
9 required by law for all amounts paid pursuant to this Agreement. Within seven (7)
10 business days after the Effective Date, the Settlement Administrator will provide the
11 Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms
12 of the Settlement, including the amount of the employer contribution for payroll taxes to
13 be paid from the Net Settlement Amount. The Settlement Administrator will also be
14 responsible for timely forwarding all payroll taxes and penalties to the appropriate
15 government authorities.

16 73. Tax Liability. Defendant makes no representation as to the tax treatment or
17 legal effect of the payments called for hereunder, and Plaintiff, Participating Class
18 Members, and Class Counsel are not relying on any statement, representation, or
19 calculation by Defendant or by the Settlement Administrator in this regard. Plaintiff,
20 Participating Class Members, and Class Counsel understand and agree that they will be
21 solely responsible for the payment of any taxes and penalties assessed on the payments
22 described herein and will defend, indemnify, and hold Defendant free and harmless from
23 and against any claims resulting from treatment of such payments as non-taxable
24 damages.

25 74. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
26 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH
27 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY,
28 AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO

1 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
2 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS
3 AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH
4 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
5 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
6 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED);
7 (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON
8 HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR
9 ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
10 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
11 THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR
12 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON
13 ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER
14 TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE
15 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR
16 ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
17 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
18 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH
19 LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
20 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE
21 OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
22 BY THIS AGREEMENT.

23 75. No Prior Assignments. The Parties and their counsel represent, covenant,
24 and warrant that they have not directly or indirectly assigned, transferred, encumbered,
25 or purported to assign, transfer, or encumber to any person or entity any portion of any
26 liability, claim, demand, action, cause of action or right herein released and discharged.

27 76. Release of Claims by Class Members. Upon the Effective Date, Plaintiff and
28 all Participating Class Members will be deemed to have fully, finally and forever released,

settled, compromised, relinquished, and discharged with respect to all of the Released Parties and any and all Released Claims. The Settlement Class and each member of the Class who has not submitted a valid Request for Exclusion, fully releases and discharges the Released Parties for the Released Claims for any period during the Class Period. The Parties agree that there is no right for any Class Member to opt out or otherwise exclude himself or herself from the Settlement of the PAGA claims in the Action.

77. Duties of the Parties Prior to Court Approval. The Parties shall promptly submit this Settlement Agreement to the Court in support of Plaintiff's Motion for Preliminary Approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Settlement Agreement, the Parties shall apply to the Court for the entry of an order:

a. Scheduling a fairness hearing on the question of whether the proposed settlement, including but not limited to, payment of attorneys' fees and costs, and the Class Representative's Enhancement Payment, should be finally approved as fair, reasonable and adequate as to the members of the Settlement Class;

b. Certifying the Settlement Class;

c. Approving, as to form and content, the proposed Notice;

d. Approving the manner and method for Class Members to request exclusion from the Settlement as contained herein and within the Notice;

e. Directing the mailing of the Notice, by first class mail to the Class Members; and

f. Preliminarily approving the Settlement subject only to the objections of Class Members and final review by the Court; and

g. Enjoining Plaintiff and all Class Members from filing or prosecuting any claims, suits or administrative proceedings (including filing claims with the California Division of Labor Standards Enforcement and the Labor and Workforce Development Agency) regarding the Released Claims unless and until such Class Members have filed valid Requests for Exclusion with the Settlement Administrator.

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1 78. Duties of the Parties Following Preliminary Court Approval. Following
2 preliminary approval by the Court of the Settlement provided for in this Settlement
3 Agreement:

4 (a) Plaintiff will timely give notice of the settlement to the LWDA in
5 accordance with Labor Code § 2699(l)(2); and

6 (b) Defendant will timely give notice of the settlement in accordance with
7 28 U.S.C. § 1715(b).

8 79. Duties of the Parties Following Final Court Approval. Following final
9 approval by the Court of the Settlement provided for in this Settlement Agreement, Class
10 Counsel for the Class will submit a proposed final order of approval and judgment:

11 (a) Approving the Settlement, adjudging the terms thereof to be fair,
12 reasonable and adequate, and directing consummation of its terms and provisions;

13 (b) Approving Class Counsel's application for an award of attorneys' fees
14 and costs;

15 (c) Approving the Class Representative Enhancement Payment to the Class
16 Representative;

17 (d) Approving the Settlement Administration Costs of the Settlement
18 Administrator;

19 (e) Entering judgment in this Action barring and enjoining all members of
20 the Settlement Class from prosecuting against any of the Released Parties, any individual
21 or class, collective or representative claims released herein, and dismissing the Action with
22 prejudice upon satisfaction of all payments and obligations hereunder.

23 80. Escalator Clause and Rescission or Renegotiation of Settlement Agreement
24 by Plaintiff. The Settlement is based in part on Defendant's representation that through
25 September 15, 2021, Class Members worked approximately 29,578 workweeks. This
26 calculation is based upon the records in Defendant's possession, custody or control
27 through June 15, 2021 and extrapolated through September 15, 2021. If it is determined
28 from the Class List that the number of workweeks has increased by more than five percent

(5%) during the Class Period, Plaintiff will have the option of voiding the Settlement or engaging in further negotiations with Defendant.

81. Rescission of Settlement Agreement by Defendant. If more than ten percent (10%) of Class Members opt-out of the Settlement by submitting Request for Exclusion forms, Defendant may, at its option, rescind and void the Settlement and all actions taken in furtherance of it will thereby be null and void. Defendant must exercise this right of rescission, in writing, to Class Counsel within fourteen (14) calendar days after the Settlement Administrator notifies the Parties of the total number of Requests for Exclusion received by the Response Deadline. If the option to rescind is exercised, Defendant shall be solely responsible for all costs of the Settlement Administrator accrued to that point.

82. Nullification of Settlement Agreement. In the event that: (a) the Court does not finally approve the Settlement as provided herein; or (b) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

83. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order for: (a) conditional certification of the Settlement Class for settlement purposes only, (b) Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the Notice Packet to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed FAC attached as **Exhibit A** and proposed Notice Packet attached as **Exhibit B**. Class Counsel will be responsible for drafting all documents necessary to obtain preliminary approval. Defendant agrees not to oppose the

1 Motion for Preliminary Approval.

2 84. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration
3 of the Response Deadline, and with the Court's permission, a Final Approval/Settlement
4 Fairness Hearing will be conducted to determine the Final Approval of the Settlement
5 Agreement along with the amounts properly payable for (a) Individual Settlement
6 Payments and Individual PAGA Settlement Payments; (b) the LWDA Payment; (c) the
7 Attorneys' Fees and Costs; (d) the Class Representative Enhancement Payment; (e) all
8 Settlement Administration Costs; and (f) the employer's share of payroll taxes for wages
9 paid in connection with the Individual Settlement Payments. The Final
10 Approval/Settlement Fairness Hearing will not be held earlier than thirty (30) calendar
11 days after the Response Deadline. Class Counsel will be responsible for drafting all
12 documents necessary to obtain final approval, including responding to any objections and
13 appeals arising therefrom. Class Counsel will also be responsible for drafting the
14 attorneys' fees and costs application to be heard at the final approval hearing.

15 85. Termination of Settlement. Subject to the obligation(s) of cooperation set
16 forth herein, either Party may terminate this Settlement if the Court declines to enter the
17 Preliminary Approval Order, the Final Approval Order or final judgment in substantially
18 the form submitted by the Parties, or the Settlement Agreement as agreed does not
19 become final because of appellate court action. The Terminating Party shall give to the
20 other Party (through its counsel) written notice of its decision to terminate no later than
21 ten (10) business days after receiving notice that one of the enumerated events has
22 occurred. Termination shall have the following effects:

23 a. The Settlement Agreement shall be terminated and shall have no force
24 or effect, and no Party shall be bound by any of its terms;

25 b. In the event the Settlement is terminated, Defendant shall have no
26 obligation to make any payments to any Party, Class Member or Class Counsel, except that
27 the Terminating Party shall pay the Settlement Administrator for services rendered up to
28 the date the Settlement Administrator is notified that the settlement has been terminated;

1 c. The Preliminary Approval Order, Final Approval Order and Judgment,
2 including any order of class certification, shall be vacated;

3 d. The Settlement Agreement and all negotiations, statements and
4 proceedings relating thereto shall be without prejudice to the rights of any of the Parties,
5 all of whom shall be restored to their respective positions in the Action prior to the
6 settlement;

7 e. Neither this Stipulated Settlement, nor any ancillary documents,
8 actions, statements or filings in furtherance of settlement (including all matters associated
9 with the mediation) shall be admissible or offered into evidence in the Action or any other
10 action for any purpose whatsoever.

11 86. Judgment and Continued Jurisdiction. Upon final approval of the Settlement
12 by the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will
13 present the Judgment pursuant to Rule 23(e) of the Federal Rules of Civil Procedure to
14 the Court for its approval. After entry of the Judgment, the Court will have continuing
15 jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of
16 the terms of the Settlement, (b) Settlement administration matters, and (c) such post-
17 Judgment matters as may be appropriate under court rules or as set forth in this
18 Agreement.

19 87. Exhibits Incorporated by Reference. The terms of this Agreement include
20 the terms set forth in any attached Exhibits, which are incorporated by this reference as
21 though fully set forth herein. Any Exhibits to this Agreement are an integral part of the
22 Settlement.

23 88. Confidentiality. The Parties and their counsel agree that they will not issue
24 any media or press releases, initiate any contact with the media or press, respond to any
25 media or press inquiry, or have any communication with the media or press about the
26 fact, amount, or terms of the Settlement. In addition, the Parties and their counsel agree
27 that they will not engage in any advertising or distribute any marketing materials relating
28 to the Settlement of this case. The Class Representative and Class Counsel will not make

1 any public disclosure of the Settlement or the Confidential Memorandum of
2 Understanding through the filing of a motion for preliminary approval by the court. Class
3 counsel will take all steps necessary to ensure the Class Representative is aware of, and
4 will instruct the Class Representative to adhere to, the restrictions set forth in this
5 paragraph. Any communication about the Settlement to Class Members prior to the
6 Court-approved mailing will be limited to a statement that a settlement has been reached
7 and the details will be communicated in a forthcoming Court-approved notice. Nothing
8 set forth herein, however, shall prohibit the parties from providing this Agreement to the
9 Court in connection with the Parties' efforts to seek the Court's approval of this
10 Settlement. Neither Plaintiff nor Class Counsel shall hold a press conference or otherwise
11 seek to affirmatively contact the media about the Settlement. Plaintiff and Class Counsel
12 agree not to disparage or otherwise take any action which could reasonably be expected
13 to adversely affect the personal or professional reputation of Defendant or the Settlement.

14 89. Other Lawsuits. To the fullest extent permissible under applicable law, and
15 solely for the purposes of this Settlement Agreement and not for any other purpose,
16 counsel for Plaintiff represents and warrants on behalf of themselves and all others acting
17 on their behalf, that they: (i) have not been retained by any other individuals with claims
18 against Defendant (other than those of which Defendant and/or its counsel have been
19 advised); (ii) are not aware of, and have not been informed of, any other plaintiff, class
20 member, or attorney who intends to bring a claim against Defendant including, but not
21 limited to, any claim based on the subject matter of the Action and/or PAGA Action; and
22 (iii) do not currently intend to bring any other claim against Defendant. Nothing in the
23 foregoing is intended to limit or restrict Plaintiff's counsel's ability to practice law, or to
24 otherwise violate California Rules of Professional Conduct, Rule 1-500. To the extent
25 any portion of this paragraph is found to violate Rule 1-500, or any other Rule of
26 Professional Conduct, such offending language will be deemed stricken and will be treated
27 as if it is of no force and effect.

28 90. Entire Agreement. This Settlement Agreement and any attached Exhibits

1 constitute the entirety of the Parties' settlement terms. No other prior or
2 contemporaneous written or oral agreements may be deemed binding on the Parties. The
3 Parties expressly recognize California Civil Code section 1625 and California Code of
4 Civil Procedure section 1856(a), which provide that a written agreement is to be
5 construed according to its terms and may not be varied or contradicted by extrinsic
6 evidence, and the Parties agree that no such extrinsic oral or written representations or
7 terms will modify, vary or contradict the terms of this Agreement.

8 91. Amendment or Modification. This Settlement Agreement may be amended
9 or modified only by a written instrument signed by the named Parties and counsel for all
10 Parties or their successors-in-interest.

11 92. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
12 warrant and represent they are expressly authorized by the Parties whom they represent
13 to negotiate this Settlement Agreement and to take all appropriate action required or
14 permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate
15 its terms and to execute any other documents required to effectuate the terms of this
16 Settlement Agreement. The Parties and their counsel will cooperate with each other and
17 use their best efforts to effect the implementation of the Settlement. If the Parties are
18 unable to reach agreement on the form or content of any document needed to implement
19 the Settlement, or on any supplemental provisions that may become necessary to
20 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court
21 to resolve such disagreement.

22 93. Signatories. It is agreed that because the members of the Class are so
23 numerous, it is impossible or impractical to have each member of the Class execute this
24 Settlement Agreement. The Notice, attached hereto as **Exhibit B**, will advise all Class
25 Members of the binding nature of the release, and the release shall have the same force
26 and effect as if this Settlement Agreement were executed by each member of the Class.

27 94. Binding on Successors and Assigns. This Settlement Agreement will be
28 binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto,

as previously defined.

95. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

96. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

97. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Agreement.

98. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

99. Plaintiff's Waiver of Right to Be Excluded and Object. Plaintiff agrees to sign this Settlement Agreement and, by signing this Settlement Agreement, is hereby bound by the terms herein. For good and valuable consideration, Plaintiff further agrees that Plaintiff will not request to be excluded from the Settlement Agreement, nor object to any terms herein. Any such request for exclusion or objection by Plaintiff will be void and of no force or effect. Any efforts by Plaintiff to circumvent the terms of this paragraph will be void and of no force or effect.



1 100. Waiver of Certain Appeals. The Parties agree to waive appeals and to
2 stipulate to class certification for purposes of this Settlement only; except, however, that
3 Plaintiff or Class Counsel may appeal any reduction in the Attorneys' Fees and Costs
4 below the amount requested from the Court, and either Party may terminate this
5 Settlement or appeal any Court order which is not in substantially the form submitted by
6 the Parties.

7 101. Non-Admission of Liability. The Parties enter into this Agreement to
8 resolve the dispute that has arisen between them and to avoid the burden, expense and
9 risk of continued litigation. In entering into this Agreement, Defendant does not admit,
10 and specifically denies, it has violated any federal, state, or local law; violated any
11 regulations or guidelines promulgated pursuant to any statute or any other applicable
12 laws, regulations or legal requirements; breached any contract; violated or breached any
13 duty; engaged in any misrepresentation or deception; or engaged in any other unlawful
14 conduct with respect to its employees. Neither this Agreement, nor any of its terms or
15 provisions, nor any of the negotiations connected with it, shall be construed as an
16 admission or concession by Defendant of any such violations or failures to comply with
17 any applicable law. Except as necessary in a proceeding to enforce the terms of this
18 Agreement, this Agreement and its terms and provisions shall not be offered or received
19 as evidence in any action or proceeding to establish any liability or admission on the part
20 of Defendant or to establish the existence of any condition constituting a violation of, or
21 a non-compliance with, federal, state, local or other applicable law.

22 102. Captions. The captions and section numbers in this Agreement are inserted
23 for the reader's convenience, and in no way define, limit, construe or describe the scope
24 or intent of the provisions of this Agreement.

25 103. Waiver. No waiver of any condition or covenant contained in this
26 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be
27 considered to imply or constitute a further waiver by such party of the same or any other
28 condition, covenant, right or remedy.

^{DS}
C B J R

1 104. Enforcement Actions. In the event that one or more of the Parties institute
2 any legal action or other proceeding against any other Party or Parties to enforce the
3 provisions of this Settlement or to declare rights and/or obligations under this Settlement,
4 the successful Party or Parties will be entitled to recover from the unsuccessful Party or
5 Parties reasonable attorneys' fees and costs, including expert witness fees incurred in
6 connection with any enforcement actions.

7 105. Mutual Preparation. The Parties have had a full opportunity to negotiate the
8 terms and conditions of this Agreement. Accordingly, this Agreement will not be
9 construed more strictly against one party than another merely by virtue of the fact that it
10 may have been prepared by counsel for one of the Parties, it being recognized that,
11 because of the arms-length negotiations between the Parties, all Parties have contributed
12 to the preparation of this Agreement.

13 106. Representation By Counsel. The Parties acknowledge that they have been
14 represented by counsel throughout all negotiations that preceded the execution of this
15 Agreement, and that this Agreement has been executed with the consent and advice of
16 counsel, and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent
17 that there are no liens on the Settlement Agreement.

18 107. All Terms Subject to Final Court Approval. All amounts and procedures
19 described in this Settlement Agreement herein will be subject to final Court approval.

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

24 To Plaintiff and the Settlement Class:

25 Joseph Lavi
26 Vincent C. Granberry
27 Courtney M. Miller
28 LAVI & EBRAHIMIAN, LLP
 8889 West Olympic Boulevard, Suite 200

DS
C B J R

Beverly Hills, CA 90211

To Defendant:

Nicky Jatana
 Connie L. Chen
 JACKSON LEWIS P.C.
 725 South Figueroa Street, Suite 2500
 Los Angeles, California 90017

109. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

110. Integration Clause. This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

111. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Agreement, and further intend that this Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release Between Plaintiff and Defendant as of the date(s) set forth below:

SIGNATURES

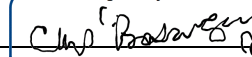
READ CAREFULLY BEFORE SIGNING

PLAINTIFF: Chris Bonsangue

Dated: November 5, 2021

Chris Bonsangue

DocuSigned by:



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DS

C B J R

DEFENDANT: Ferrellgas, Inc.

Dated: _____

Please Print Name of Authorized Signatory

LAVI & EBRAHIMIAN, LLP

Dated: November 5, 2021

DocuSigned by:
Joseph Lavi
871E0169FCF244D...

Joseph Lavi
Vincent C. Granberry
Courtney M. Miller
Attorneys for Plaintiff Chris Bonsangue

JACKSON LEWIS P.C.

Dated: _____

Nicky Jatana
Connie L. Chen
Attorneys for Defendant Ferrellgas, Inc. and
Ferrellgas, L.P. d/b/a Blue Rhino

4866-3870-4130, v. 1

DEFENDANT: Ferrellgas, Inc.

Dated: November 8, 2021



Jordan B. Burns

Please Print Name of Authorized Signatory

LAVI & EBRAHIMIAN, LLP

Dated: _____

Joseph Lavi

Vincent C. Granberry

Courtney M. Miller

Attorneys for Plaintiff Chris Bonsangue

JACKSON LEWIS P.C.

Dated: November 8, 2021



Nicky Jatana

Connie L. Chen

Attorneys for Defendant Ferrellgas, Inc. and
Ferrellgas, L.P. d/b/a Blue Rhino

4866-3870-4130, v. 1

Exhibit A

Joseph Lavi, Esq. (SBN 209776)
Email: jlavi@lelawfirm.com
Vincent C. Granberry, Esq. (SBN 276483)
Email: vgranberry@lelawfirm.com
Melissa A. Huether, Esq. (SBN 316604)
Email: mhuether@lelawfirm.com
Courtney M. Miller, Esq. (SBN 327850)
Email: cmiller@lelawfirm.com
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001

Attorneys for Plaintiff CHRIS BONSANGUE
on behalf of himself and other similarly situated drivers

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHRIS BONSANGUE, on behalf of
himself and other similarly situated and
aggrieved drivers,

Plaintiff,

vs.

FERRELLGAS, INC.; FERRELLGAS,
L.P.; BLUE RHINO LLC; and DOES 1 to
100, inclusive,

Defendants.

Case No. 2:20-cv-11169-FMO (RAOx)

CLASS ACTION

**PLAINTIFF CHRIS
BONSANGUE'S FIRST
AMENDED COMPLAINT FOR
DAMAGES AND RESTITUTION
FOR:**

- 1. FAILURE TO PAY WAGES
FOR ALL HOURS
WORKED AT MINIMUM
WAGE IN VIOLATION OF
LABOR CODE SECTIONS
1194 AND 1197**
- 2. FAILURE TO AUTHORIZE
OR PERMIT MEAL
PERIODS IN VIOLATION
OF LABOR CODE
SECTIONS 512 AND 226.7**
- 3. FAILURE TO AUTHORIZE
OR PERMIT REST**

**PERIODS IN VIOLATION
OF LABOR CODE
SECTION 226.7**

- 4. FAILURE TO PROVIDE
COMPLETE AND
ACCURATE WAGE
STATEMENTS IN
VIOLATION OF LABOR
CODE SECTION 226**
- 5. FAILURE TO TIMELY
PAY ALL EARNED
WAGES AND FINAL
PAYCHECKS DUE AT
TIME OF SEPARATION OF
EMPLOYMENT IN
VIOLATION OF LABOR
CODE SECTIONS 201, 202,
AND 203**
- 6. UNFAIR BUSINESS
PRACTICES, IN
VIOLATION OF BUSINESS
AND PROFESSIONS CODE
SECTIONS 17200, ET SEQ.**
- 7. CIVIL PENALTIES
PURSUANT TO THE
PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff CHRIS BONSANGUE ("Plaintiff"), who alleges and complains against Defendants FERRELLGAS, INC.; and DOES 1 to 10, inclusive (collectively "Defendants") as follows:

1 **I. INTRODUCTION**

2 1. This is a class action and PAGA representative lawsuit seeking unpaid
3 wages and interest thereon for failure to pay wages for all hours worked at minimum
4 wage; failure to authorize or permit all legally required and compliant meal periods
5 or pay meal period premium wages; failure to authorize or permit all legally required
6 and compliant rest periods or pay rest period premium wages; statutory penalties for
7 failure to provide accurate wage statements; waiting time penalties in the form of
8 continuation wages for failure to timely pay employees all wages due upon separation
9 of employment; civil penalties pursuant to Labor Code section 2698 et seq.; injunctive
10 relief and other equitable relief; reasonable attorneys' fees pursuant to Labor Code
11 sections 218.5, 226(e), 1194, and 2699; costs; and interest brought on behalf of
12 Plaintiff and other similarly situated and aggrieved current and former drivers.

13 **II. JURISDICTION AND VENUE**

14 2. This Court has jurisdiction over the claims of Plaintiff, putative class
15 members, and all other current and former aggrieved California-based hourly non-
16 exempt drivers employed by Defendant for failure to pay wages for all hours worked
17 at minimum wage; failure to authorize or permit all legally required and compliant
18 meal periods or pay meal period premium wages; failure to authorize or permit all
19 legally required and compliant rest periods or pay rest period premium wages;
20 statutory penalties for failure to provide accurate wage statements; waiting time
21 penalties in the form of continuation wages for failure to timely pay employees all
22 wages due upon separation of employment; civil penalties; and claims for injunctive
23 relief and restitution under Business and Professions Code sections 17200, *et seq.*, for
24 the following reasons: Defendants operate throughout California; Defendants
25 employed Plaintiff, putative class members, and similarly aggrieved employees in
26 locations throughout California, including but not limited to Los Angeles County at
27 412 West Lancaster Boulevard, Lancaster, California 93534; more than two-thirds of
28 putative class members are California citizens; the principal violations of California

1 law occurred in California; no other class actions have been filed against Defendants
2 in the last four (4) years alleging wage and hour violations; the conduct of Defendants
3 forms a significant basis for Plaintiff's, putative class members' and similarly
4 aggrieved employees' claims; and Plaintiff, putative class members and similarly
5 aggrieved employees seek significant relief from Defendants.

6 **III. PARTIES**

7 3. Plaintiff brings this action on behalf of himself and other members of the
8 general public similarly situated, and all other current and former aggrieved
9 California-based hourly non-exempt drivers of Defendant, and the State of California
10 pursuant to PAGA. The named Plaintiff, the class of persons and other aggrieved
11 drivers on whose behalf this action is filed are current, former, and/or future
12 employees of Defendants who work, worked, or will work for Defendants as hourly
13 non-exempt drivers. At all times mentioned herein, the currently named Plaintiff is
14 and was a resident of California and was employed by Defendants in the State of
15 California within the four (4) years prior to the filing of this Complaint.

16 4. Defendants employed Plaintiff as an hourly non-exempt driver from in
17 or around February 17, 2004, until on or about March 18, 2020.

18 5. Plaintiff is informed and believes and thereon alleges that Defendants
19 employed him and other hourly non-exempt employees throughout the State of
20 California and therefore their conduct forms a significant basis of the claims asserted
21 in this matter.

22 6. Plaintiff is informed and believes and thereon alleges that Defendant
23 FERRELLGAS, INC. is authorized to do business within the State of California and
24 is doing business in the State of California and/or that Defendants DOES 1-5 are, and
25 at all times relevant hereto were persons acting on behalf of Defendant
26 FERRELLGAS, INC. in the establishment of, or ratification of, the aforementioned
27 illegal wage and hour practices or policies. Defendant FERRELLGAS, INC. operates
28 in Los Angeles County and employed Plaintiff and putative class members in Los

1 Angeles County, including but not limited to, at 412 West Lancaster Boulevard,
2 Lancaster, California 93534.

3 7. Plaintiff is informed and believes and thereon alleges that Defendants
4 DOES 6-10 are individuals unknown to Plaintiff. Each of the individual Defendants
5 is sued individually in his or her capacity as an agent, shareholder, owner,
6 representative, manager, supervisor, independent contractor and/or employee of each
7 Defendant and participated in the establishment of, or ratification of, the
8 aforementioned illegal wage and hour practices or policies.

9 8. Plaintiff is unaware of the true names of Defendants DOES 1-10.
10 Plaintiff sues said Defendants by said fictitious names and will amend this Complaint
11 when the true names and capacities are ascertained or when such facts pertaining to
12 liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed
13 and believes that each of the fictitiously named Defendants is in some manner
14 responsible for the events and allegations set forth in this Complaint.

15 9. Plaintiff is informed and believes and thereon alleges that at all relevant
16 times, each Defendant was an employer, was the principal, agent, partner, joint
17 venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent
18 corporation, successor in interest and/or predecessor in interest of some or all of the
19 other Defendants, and was engaged with some or all of the other Defendants in a joint
20 enterprise for profit, and bore such other relationships to some or all of the other
21 Defendants so as to be liable for their conduct with respect to the matters alleged in
22 this Complaint. Plaintiff is further informed and believes and thereon alleges that each
23 Defendant acted pursuant to and within the scope of the relationships alleged above,
24 and that at all relevant times, each Defendant knew or should have known about,
25 authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of
26 all other Defendants. As used in this Complaint, "Defendant" means "Defendants and
27 each of them," and refers to the Defendants named in the particular cause of action in
28 which the word appears and includes Defendants FERRELLGAS, INC.; and DOES

1 to 10, inclusive.

10. At all times mentioned herein, each Defendant was the co-conspirator, agent, servant, employee, and/or joint venturer of each of the other defendants and was acting within the course and scope of said conspiracy, agency, employment, and/or joint venture and with the permission and consent of each of the other Defendants.

11. Plaintiff makes the allegations in this Complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's rights to plead in the alternative.

IV. DESCRIPTION OF ILLEGAL PAY PRACTICES

12. Pursuant to the applicable Industrial Welfare Commission ("IWC") Wage Order ("Wage Order"), codified at California Code of Regulations, title 8, section 11090, Defendants are employers of Plaintiff within the meaning of Wage Order 9 and applicable Labor Code sections. Therefore, each of these Defendants is jointly and severally liable for the wrongs complained of herein in violation of the Wage Order and the Labor Code.

13. **Failure to pay wages for all hours worked at the legal minimum wage:** Defendants employed many of their employees, including Plaintiff, as hourly non-exempt drivers. In California, an employer is required to pay hourly employees for all "hours worked," which includes all time that an employee is under the control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services which inure to the benefit of the employer.

14. Labor Code sections 1194 and 1197 require an employer to compensate employees for all "hours worked" at least at the minimum wage rate of pay as established by the IWC and the Wage Orders.

15. In this case, Defendants failed to pay Plaintiff and similarly situated drivers all wages at the applicable minimum wage for all hours worked due to

1 Defendants' policies, practices, and/or procedures including, but not limited to: (1)
2 requiring Plaintiff and similarly situated drivers to undergo off-the-clock drug testing
3 – without paying them for such time; (2) rounding down the hours worked by Plaintiff
4 and similarly situated drivers to the nearest quarter of an hour to the benefit of
5 Defendants – without paying them for such time; (3) requiring Plaintiff and similarly
6 situated drivers to work on-call – without paying them for such time; and (4) requiring
7 Plaintiff and similarly situated drivers to guard their trucks during their meal periods
8 and stay within one hundred (100) feet of their trucks during their meal periods –
9 without paying them for such time.

10 16. Therefore, Defendants suffered, permitted, and required their hourly
11 employees to be subject to Defendants' control without paying wages for that time.
12 This resulted in Plaintiff and similarly situated drivers working time for which they
13 were not compensated any wages, in violation of Labor Code sections 1194, 1197,
14 and the Wage Order.

15 17. **Failure to authorize or permit all legally required and compliant**
16 **meal periods and/or failure to pay meal period premium wages:** Defendants often
17 employed hourly non-exempt employees, including the named Plaintiff and similarly
18 situated drivers, for shifts longer than five (5) hours in length and shifts longer than
19 ten (10) hours in length.

20 18. California law requires an employer to authorize or permit an
21 uninterrupted meal period of no less than thirty (30) minutes no later than the end of
22 the employee's fifth hour of work and a second meal period no later than the
23 employee's tenth hour of work. (Labor Code section 512; Wage Order 9 at §11). If
24 the employee is not relieved of all duties during a meal period, the meal period shall
25 be considered an "on duty" meal period and counted as time worked. A paid "on duty"
26 meal period is only permitted when (1) the nature of the work prevents an employee
27 from being relieved of all duty and (2) the parties have a written agreement agreeing
28 to on-duty meal periods. If the employee is not free to leave the work premises or

1 worksite during the meal period, even if the employee is relieved of all other duty
2 during the meal period, the employee is subject to the employer's control and the meal
3 period is counted as time worked. If an employer fails to provide an employee a meal
4 period in accordance with the law, the employer must pay the employee one (1) hour
5 of pay at the employee's regular rate of pay for each workday that a legally required
6 and compliant meal period was not provided. Labor Code section 226.7; Wage Order
7 9 at §11.

8 19. In this case, Plaintiff and similarly situated drivers worked shifts long
9 enough to entitle them to meal periods under California law. Nevertheless, Defendants
10 employed policies, practices, and/or procedures that resulted in their failure to
11 authorize or permit all legally required and compliant rest periods. Such policies,
12 practices, and/or procedures included, but were not limited to: (1) requiring Plaintiff
13 and similarly situated drivers to guard their trucks during their meal periods and to
14 stay within one hundred (100) feet of their truck during their meal periods, resulting
15 in meal periods that were not duty-free; and (2) failing to authorize or permit Plaintiff
16 and similarly situated drivers a second uninterrupted duty-free meal period of no less
17 than thirty (30) minutes for shifts exceeding ten (10) hours.

18 20. Additionally, Defendants failed to pay Plaintiff and similarly situated
19 drivers a meal period premium wage of one (1) additional hour of pay at their regular
20 rate of compensation for each workday the drivers did not receive all legally required
21 and compliant meal periods. Defendants employed policies and procedures which
22 ensured that drivers did not receive any meal period premium wages to compensate
23 them for workdays in which they did not receive all legally required and compliant
24 meal periods.

25 21. The aforementioned policies, practices, and/or procedures of Defendants
26 resulted in Plaintiff and similarly situated drivers not being provided with all legally
27 required and compliant meal periods and/or not receiving premium wages to
28 compensate them for such instances, all in violation of California law.

1 22. **Failure to authorize and permit all legally required and compliant**
2 **rest periods and/or failure to pay rest period premiums:** Defendants often
3 employed non-exempt employees, including the named Plaintiff and similarly
4 situated drivers, for shifts of more than three-and-a-half (3.5) hours.

5 23. California law requires every employer to authorize and permit an
6 employee a rest period of ten (10) net minutes for every four (4) hours worked or
7 major fraction thereof. Labor Code section 226.7; Wage Order 9 at §12. If the
8 employer fails to authorize or permit a required rest period, the employer must pay
9 the employee one (1) hour of pay at the employee's regular rate of compensation for
10 each workday the employer did not authorize or permit a legally required rest period.
11 *Id.* Under California law, "[e]mployees are entitled to 10 minutes' rest for shifts from
12 three and one-half to six hours in length, 20 minutes for shifts of more than six hours
13 up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on."
14 (*Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029;
15 Labor Code section 226.7; Wage Order 9 at §12). Rest periods, insofar as practicable,
16 shall be in the middle of each work period. (Wage Order 9 at §12). Additionally, the
17 rest period requirement "obligates employers to permit – and authorizes employees to
18 take – off-duty rest periods." (*Augustus v. ABM Security Services, Inc.*, (2016) 5
19 Cal.5th 257, 269). That is, during rest periods employers must relieve employees of
20 all duties and relinquish control over how employees spend their time. *Id.*

21 24. In this case, Plaintiff and similarly situated drivers regularly worked
22 shifts of more than three-and-a-half (3.5) hours. Nevertheless, Defendants employed
23 policies, practices, and/or procedures that resulted in their failure to authorize or
24 permit all legally required and compliant rest periods to Plaintiff and similarly situated
25 drivers. Such policies, practices, and/or procedures included, but were not limited to:
26 (1) requiring Plaintiff and similarly situated drivers to guard their trucks during their
27 rest periods and stay within one hundred (100) feet of their truck, resulting in rest
28 periods that were not duty-free; and (2) failing to authorize or permit Plaintiff and

1 similarly situated drivers a third uninterrupted duty-free rest period of a net ten (10)
2 minutes for shifts exceeding ten (10) hours.

3 25. Additionally, Defendants failed to pay Plaintiff and similarly situated
4 drivers a rest period premium wage of one (1) additional hour of pay at their regular
5 rate of compensation for each workday the drivers did not receive all legally required
6 and compliant rest periods. Defendants employed policies and procedures which
7 ensured that drivers did not receive any rest period premium wages to compensate
8 them for workdays in which they did not receive all legally required and compliant
9 rest periods.

10 26. The aforementioned policies, practices, and/or procedures of Defendants
11 resulted in Plaintiff and similarly situated drivers not being provided with all legally
12 required and compliant rest periods and/or not receiving premium wages to
13 compensate them for such instances, all in violation of California law.

14 27. **Failure to Provide Accurate Wage Statements:** Labor Code section
15 226(a) provides, *inter alia*, that, upon paying an employee his or her wages, the
16 employer must “furnish each of his or her employees ... an itemized statement in
17 writing showing (1) gross wages earned, (2) total hours worked by the employee,
18 except for any employee whose compensation is solely based on a salary and who is
19 exempt from payment of overtime under subdivision (a) of Section 515 or any
20 applicable order of the Industrial Welfare Commission, (3) the number of piece-rate
21 units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
22 (4) all deductions, provided, that all deductions made on written orders of the
23 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
24 inclusive dates of the pay period for which the employee is paid, (7) the name of the
25 employee and his or her social security number, (8) the name and address of the legal
26 entity that is the employer, and (9) all applicable hourly rates in effect during the pay
27 period and the corresponding number of hours worked at each hourly rate by the
28 employee.”

1 28. As a derivative of Plaintiff's claims above, Plaintiff alleges that
2 Defendants failed to provide accurate wage and hour statements to him and other
3 similarly situated employees who were subject to Defendants' control for
4 uncompensated time and who did not receive all their earned wages (including
5 minimum wages, meal period premium wages, and/or rest period premium wages), in
6 violation of Labor Code section 226.

7 29. **Failure to Timely Pay Final Wages:** An employer is required to pay all
8 unpaid wages timely after an employee's employment ends. The wages are due
9 immediately upon termination (Labor Code section 201) or within seventy-two (72)
10 hours of resignation (Labor Code section 202).

11 30. As a result of the aforementioned violations of the Labor Code, Plaintiff
12 alleges that he, and on information and belief, other similarly situated employees,
13 were not paid their final wages in a timely manner as required by Labor Code section
14 203. Minimum wages for all hours worked , meal period premium wages, and/or rest
15 period premium wages (all described above), were not paid at the time of Plaintiff's
16 and other similarly situated employees' separation of employment, whether
17 voluntarily or involuntarily, as required by Labor Code sections 201, 202, and 203.

18 **V. CLASS DEFINITIONS AND CLASS ALLEGATIONS**

19 31. Plaintiff brings this action on behalf of himself, on behalf of other
20 similarly situated drivers, and on behalf of the general public, and as members of a
21 Class defined as follows:

22 A. **Minimum Wage Class:** All current and former hourly non-
23 exempt drivers employed by Defendants in California at any time from four (4) years
24 prior to the filing of the initial Complaint in this action through the date notice is
25 mailed to a certified class who were not paid at least minimum wage for all time they
26 were subject to Defendants' control.

27 B. **Meal Period Class:** All current and former hourly non-exempt
28 drivers employed by Defendants in California at any time from four (4) years prior to

1 the filing of the initial Complaint in this action through the date notice is mailed to a
2 certified class who worked shifts of more than five (5) hours, yet Defendants failed to
3 authorize or permit a duty-free uninterrupted meal period of no less than thirty (30)
4 minutes for each five-hour period of work.

5 C. **Rest Period Class:** All current and former hourly non-exempt
6 drivers employed by Defendants in California at any time from four (4) years prior to
7 the filing of the initial Complaint in this action through the date notice is mailed to a
8 certified class who worked shifts of at least three-and-a-half (3.5) hours who did not
9 receive all required duty-free rest periods of a net ten (10) minutes for every four (4)
10 hours worked or major fraction thereof.

11 D. **Wage Statement Class:** All current and former hourly non-
12 exempt drivers employed by Defendants in California at any time within the one (1)
13 year prior to the filing of the initial Complaint in this action through the date notice is
14 mailed to a certified class who received inaccurate or incomplete wage and hour
15 statements.

16 E. **Waiting Time Class:** All current and former hourly non-exempt
17 drivers employed by Defendants in California at any time within the three (3) years
18 prior to the filing of the initial Complaint in this action through the date notice is
19 mailed to a certified class who did not receive payment of all unpaid wages upon
20 separation of employment within the statutory time period.

21 F. **California Class:** All aforementioned classes are herein
22 collectively referred to as the "California Class."

23 32. There is a well-defined community of interest in the litigation and the
24 classes are ascertainable:

25 A. **Numerosity:** While the exact number of class members in each
26 class is unknown to Plaintiff at this time, the Plaintiff classes are so numerous that the
27 individual joinder of all members is impractical under the circumstances of this case.

28 ///

1 B. **Common Questions Predominate:** Common questions of law
2 and fact exist as to all members of the Plaintiff classes and predominate over any
3 questions that affect only individual members of each class. The common questions
4 of law and fact include, but are not limited to:

5 i. Whether Defendants violated Labor Code sections 1194
6 and 1197 by not paying wages at the minimum wage rate for all time that the
7 Minimum Wage Class Members were subject to Defendants' control;

8 ii. Whether Defendants violated Labor Code sections 512 and
9 226.7, as well as the applicable Wage Order, by employing the Meal Period Class
10 Members without providing all compliant and/or required meal periods and/or paying
11 meal period premium wages;

12 iii. Whether Defendants violated Labor Code section 226.7 by
13 employing the Rest Period Class Members without providing all compliant and/or
14 required rest periods and/or paying rest period premium wages;

15 iv. Whether Defendants failed to provide the Wage Statement
16 Class Members with accurate itemized statements at the time they received their
17 itemized statements;

18 v. Whether Defendants failed to provide the Waiting Time
19 Class Members with all of their earned wages upon separation of employment within
20 the statutory time period;

21 vi. Whether Defendants committed unlawful business acts or
22 practice within the meaning of Business and Professions Code sections 17200, *et seq.*;

23 vii. Whether Class Members are entitled to unpaid wages,
24 penalties, and other relief pursuant to their claims;

25 viii. Whether, as a consequence of Defendants' unlawful
26 conduct, the Class Members are entitled to restitution, and/or equitable relief; and

27 ix. Whether Defendants' affirmative defenses, if any, raise any
28 common issues of law or fact as to Plaintiff and as to Class Members as a whole.

1 C. **Typicality:** Plaintiff's claims are typical of the claims of the class
2 members in each of the classes. Plaintiff and members of the Minimum Wage Class
3 sustained damages arising out of Defendants' failure to pay wages at least at minimum
4 wage for all time the employees were subject to Defendants' control. Plaintiff and
5 members of the Meal Period Class sustained damages arising out of Defendants'
6 failure to provide non-exempt drivers with all required meal periods and/or meal
7 periods that were duty-free and not less than thirty (30) minutes and/or failure to pay
8 meal period premium wages as compensation. Plaintiff and members of the Rest
9 Period Class sustained damages arising out of Defendants' failure to provide non-
10 exempt drivers with all required rest periods and/or rest periods that were duty-free
11 and of a net ten (10) minutes and/or failure to pay rest period premium wages as
12 compensation. Plaintiff and members of the Wage Statement Class sustained damages
13 arising out of Defendants' failure to furnish them with accurate itemized wage
14 statements in compliance with Labor Code section 226. Plaintiff and members of the
15 Waiting Time Class sustained damages arising out of Defendants' failure to provide
16 all unpaid yet earned wages due upon separation of employment within the statutory
17 time limit.

18 D. **Adequacy of Representation:** Plaintiff will fairly and adequately
19 protect the interests of the members of each class. Plaintiff has no interest that is
20 adverse to the interests of the other class members.

21 E. **Superiority:** A class action is superior to other available means
22 for the fair and efficient adjudication of this controversy. Because individual joinder
23 of all members of each class is impractical, class action treatment will permit a large
24 number of similarly situated persons to prosecute their common claims in a single
25 forum simultaneously, efficiently, and without the unnecessary duplication of effort
26 and expense that numerous individual actions would engender. The expenses and
27 burdens of individual litigation would make it difficult or impossible for individual
28 members of each class to redress the wrongs done to them, while important public

interests will be served by addressing the matter as a class action. The cost to and burden on the court system of adjudication of individualized litigation would be substantial, and substantially more than the costs and burdens of a class action. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

F. **Public Policy Consideration:** Employers throughout the state violate wage and hour laws. Current employees often are afraid to assert their rights out of fear of direct or indirect retaliation. Former employees fear bringing actions because they perceive their former employers can blacklist them in their future endeavors with negative references or by other means. Class actions provide the class members who are not named in the Complaint with a type of anonymity that allows for vindication of their rights.

FIRST CAUSE OF ACTION

**FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE LEGAL
MINIMUM WAGE RATE IN VIOLATION OF LABOR CODE SECTIONS
1194 AND 1197**

(Against All Defendants by Plaintiff and the Minimum Wage Class)

33. Plaintiff hereby incorporate by reference paragraphs 1-32 above, as if fully set forth below.

34. At all times relevant to this Complaint, Plaintiff and members of the Minimum Wage Class were hourly non-exempt drivers employed by Defendants.

35. Pursuant to Labor Code sections 1194, 1197, and the Wage Order, Plaintiff and the Minimum Wage Class are entitled to receive wages for all hours worked, i.e., all time they were subject to Defendants' control, and those wages must be paid at least at the minimum wage rate in effect during the time the employees earned the wages.

36. Defendants' policies, practices, and/or procedures required Plaintiff and members of the Minimum Wage Class to be engaged, suffered, or permitted to work

1 without being paid wages for all of the time in which they were subject to Defendants'
2 control.

3 37. Specifically, Defendants employed policies, practices, and/or procedures
4 including, but not limited to: (1) requiring Plaintiff and Minimum Wage Class
5 Members to undergo off-the-clock drug testing – without paying them for such time;
6 (2) rounding down the hours worked by Plaintiff and Minimum Wage Class Members
7 to the nearest quarter of an hour to the benefit of Defendants – without paying them
8 for such time; (3) requiring Plaintiff and Minimum Wage Class Members to work on-
9 call – without paying them for such time; and (4) requiring Plaintiff and Minimum
10 Wage Class Members to guard their trucks during their meal periods and stay within
11 one hundred (100) feet of their trucks during their meal periods – without paying
12 them for such time.

13 38. As a result of Defendants' unlawful conduct, Plaintiff and Minimum
14 Wage Class Members have suffered damages in an amount subject to proof, to the
15 extent that they were not paid wages at a minimum wage rate for all hours worked.

16 39. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff and
17 Minimum Wage Class Members are entitled to recover unpaid minimum wage,
18 interest thereon, liquidated damages in the amount of their unpaid minimum wage,
19 and attorneys' fees and costs.

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN** 22 **VIOLATION OF LABOR CODE SECTIONS 512 AND 226.7 AND THE** 23 **WAGE ORDER**

24 **(Against All Defendants by Plaintiff and the Meal Period Class)**

25 40. Plaintiff hereby incorporates by reference paragraphs 1-39 above, as if
26 fully set forth below.

27 41. At all times relevant to this Complaint, Plaintiff and members of the
28 Meal Period Class were hourly non-exempt drivers employed by Defendants and

covered by Labor Code sections 512 and 226.7 and the Wage Order.

42. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities no later than the end of the employee's fifth hour of work and a second meal period no later than the employee's tenth hour of work. Labor Code sections 226.7, 512; Wage Order 9 at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. If the employer requires the employee to remain at the work site or facility during the meal period, the meal period must be paid. This is true even where the employee is relieved of all work duties during the meal period. *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code section 226.7; Wage Order 9 at §11.

43. In this case, Plaintiff and Meal Period Class Members worked shifts long enough to entitle them to meal periods under California law. Nevertheless, Defendants employed policies, practices, and/or procedures that resulted in their failure to authorize or permit legally required and compliant meal periods to Plaintiff and Meal Period Class Members. Such policies, practices, and/or procedures included, but were not limited to: (1) requiring Plaintiff and Meal Period Class Members to guard their trucks during their meal periods and to stay within one hundred (100) feet of their truck during their meal periods, resulting in meal periods that were not duty-free; and (2) failing to authorize or permit Plaintiff and Meal Period Class Members a second uninterrupted duty-free meal period of no less than thirty (30) minutes for shifts exceeding ten (10) hours.

44. Additionally, Defendants failed to pay Plaintiff and Meal Period Class Members one (1) hour of pay at their regular rate of pay for each workday they did

1 not receive all legally required and compliant meal periods. Defendants lacked a
2 policy and procedure for compensating Plaintiff and Meal Period Class Members with
3 premium wages when they did not receive all legally required and compliant meal
4 periods.

5 45. Defendants' unlawful conduct alleged herein occurred in the course of
6 employment of Plaintiff and Meal Period Class Members and such conduct has
7 continued through the filing of this Complaint.

8 46. Because Defendants failed to provide employees with meal periods in
9 compliance with the law, Defendants are liable to Plaintiff and Meal Period Class
10 Members for one (1) hour of additional pay at the regular rate of compensation for
11 each workday that Defendants did not provide all legally required and compliant meal
12 periods, pursuant to Labor Code section 226.7 and the Wage Order.

13 47. Plaintiff, on behalf of himself and the Meal Period Class, seeks damages
14 and all other relief allowable, including a meal period premium wage for each
15 workday Defendants failed to provide all legally required and compliant meal periods,
16 plus pre-judgment interest.

17 **THIRD CAUSE OF ACTION**
18 **FAILURE TO AUTHORIZE OR PERMIT REQUIRED REST PERIODS IN**
19 **VIOLATION OF LABOR CODE SECTION 226.7 AND THE WAGE ORDER**
20 **(Against All Defendants by Plaintiff and the Rest Period Class)**

21 48. Plaintiff hereby incorporates by reference paragraphs 1-47 above, as if
22 fully set forth below.

23 49. At all times relevant to this Complaint, Plaintiff and members of the Rest
24 Period Class were drivers employed by Defendants and covered by Labor Code
25 section 226.7 and the Wage Order.

26 50. California law requires that "[e]very employer shall authorize and permit
27 all employees to take rest periods, which insofar as practicable shall be in the middle
28 of each work period. The authorized rest period time shall be based on the total hours

1 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
2 fraction thereof....” Wage Order 9 at § 12. Employees are entitled to 10 minutes’ rest
3 for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
4 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14
5 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53
6 Cal.4th 1004, 1029; Labor Code section 226.7. Additionally, the rest period
7 requirement “obligates employers to permit – and authorizes employees to take – off-
8 duty rest periods.” *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257,
9 269. That is, during rest periods employers must relieve employees of all duties and
10 relinquish control over how employees spend their time. *Id.* If an employer fails to
11 provide an employee a rest period in accordance with the applicable provisions of this
12 Order, the employer shall pay the employee one (1) hour of pay at the employee’s
13 regular rate of compensation for each work day that the rest period is not provided.”
14 Wage Order 9 at § 12; Labor Code section 226.7.

15 51. In this case, Plaintiff and members of the Rest Period Class regularly
16 worked shifts of more than three-and-a-half (3.5) hours. Nevertheless, Defendants
17 employed policies, practices, and/or procedures that resulted in their failure to
18 authorize or permit all legally required and compliant rest periods to Plaintiff and Rest
19 Period Class Members. Such policies, practices, and/or procedures included, but were
20 not limited to: (1) requiring Plaintiff and Rest Period Class Members to guard their
21 trucks during their rest periods and stay within one hundred (100) feet of their truck,
22 resulting in rest periods that were not duty-free; and (2) failing to authorize or permit
23 Plaintiff and Rest Period Class Members a third uninterrupted duty-free rest period of
24 a net ten (10) minutes for shifts exceeding ten (10) hours.

25 52. Additionally, Defendants failed to pay Plaintiff and Rest Period Class
26 Members one (1) hour of pay at their regular rate of pay for each workday they did
27 not receive all legally required and compliant rest periods. Defendants lacked a policy
28 and procedure for compensating Plaintiff and Rest Period Class Members with

1 premium wages when they did not receive all legally required and compliant rest
2 periods.

3 53. Defendants' unlawful conduct alleged herein occurred in the course of
4 employment of Plaintiff and the Rest Period Class Members and such conduct has
5 continued through the filing of this Complaint.

6 54. Because Defendants failed to provide employees with rest periods in
7 compliance with the law, Defendants are liable to Plaintiff and Rest Period Class
8 Members for one (1) hour of additional pay at the regular rate of compensation for
9 each workday that Defendants did not provide all legally required and compliant rest
10 periods, pursuant to Labor Code section 226.7 and the Wage Order.

11 55. Plaintiff, on behalf of himself and the Rest Period Class, seeks damages
12 and all other relief allowable, including a rest period premium wage for each workday
13 Defendants failed to provide all legally required and compliant rest periods, plus pre-
14 judgment interest.

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE** 17 **STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226** 18 **(Against All Defendants by Plaintiff and the Wage Statement Class)**

19 56. Plaintiff hereby incorporates by reference paragraphs 1-55 above, as if
20 fully set forth below.

21 57. At all times relevant to this Complaint, Plaintiff and members of the
22 Wage Statement Class were hourly non-exempt drivers employed by Defendants and
23 covered by Labor Code section 226.

24 58. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and
25 members of the Wage Statement Class were entitled to receive, semimonthly or at the
26 time of each payment of wages, an itemized wage statement accurately stating the
27 following: (1) gross wages earned, (2) total hours worked by the employee, except for
28 any employee whose compensation is solely based on a salary and who is exempt

1 from payment of overtime under subdivision (a) of Section 515 or any applicable
2 order of the Industrial Welfare Commission, (3) the number of piece-rate units earned
3 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
4 deductions, provided that all deductions made on written orders of the employee may
5 be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of
6 the period for which the employee is paid, (7) the name of the employee and his or
7 her social security number, except that by January 1, 2008, only the last four digits of
8 his or her social security number or an employee identification number other than a
9 social security number may be shown on the itemized statement, (8) the name and
10 address of the legal entity that is the employer, and (9) all applicable hourly rates in
11 effect during the pay period and the corresponding number of hours worked at each
12 hourly rate by the employee.

13 59. As a derivative of Defendants' claims above, Plaintiff alleges that
14 Defendants failed to provide accurate wage and hour statements to him and members
15 of the Wage Statement Class who were subject to Defendants' control for
16 uncompensated time and who did not receive all their earned wages (including
17 minimum wages, meal period premium wages, and/or rest period premium wages), in
18 violation of Labor Code section 226.

19 60. Defendants provided Plaintiff and members of the Wage Statement Class
20 with itemized statements which stated inaccurate information including, but not
21 limited to, the number of hours worked, the gross wages earned, and the net wages
22 earned.

23 61. Defendants' failure to provide Plaintiff and members of the Wage
24 Statement Class with accurate wage statements was knowing and intentional.
25 Defendants had the ability to provide Plaintiff and members of the Wage Statement
26 Class with accurate wage statements but intentionally provided wage statements they
27 knew were not accurate. Defendants knowingly and intentionally put in place
28 practices which deprived employees of wages and resulted in Defendants knowingly

1 and intentionally providing inaccurate wage statements. These practices included
2 Defendants' failure to include all hours worked and all wages due.

3 62. As a result of Defendants' unlawful conduct, Plaintiff and members of
4 the Wage Statement Class have suffered injury. The absence of accurate information
5 on their wage statements has prevented earlier challenges to Defendants' unlawful
6 pay practices, will require discovery and mathematical computations to determine the
7 amount of wages owed, and will cause difficulty and expense in attempting to
8 reconstruct time and pay records. Defendants' conduct led to the submission of
9 inaccurate information about wages and amounts deducted from wages to state and
10 federal government agencies. As a result, Plaintiff and the Wage Statement Class are
11 required to participate in this lawsuit and create more difficulty and expense for
12 Plaintiff and members of the Wage Statement Class from having to reconstruct time
13 and pay records than if Defendants had complied with their legal obligations.

14 63. Pursuant to Labor Code section 226(e), Plaintiff and members of the
15 Wage Statement Class are entitled to recover fifty (50) dollars per employee for the
16 initial pay period in which a section 226 violation occurred and one hundred dollars
17 per employee per violation for each subsequent pay period, not to exceed an aggregate
18 penalty of four thousand (4,000) dollars per employee.

19 64. Pursuant to Labor Code section 226(h), Plaintiff and members of the
20 Wage Statement Class are entitled to bring an action for injunctive relief to ensure
21 Defendants' compliance with Labor Code section 226(a). Injunctive relief is
22 warranted because Defendants continue to provide currently employed members of
23 the Wage Statement Class with inaccurate wage statements in violation of Labor Code
24 section 226(a) and currently employed members of the Wage Statement Class have
25 no adequate legal remedy for the continuing injuries that will be suffered as a result
26 of Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy
27 available for ensuring Defendants' compliance with Labor Code section 226(a).

28 65. Pursuant to Labor Code sections 226(e) and 226(h), Plaintiff and

1 members of the Wage Statement Class are entitled to recover the full amount of
2 penalties due under Section 226(e), reasonable attorneys' fees, and costs of suit.

3 **FIFTH CAUSE OF ACTION**

4 **FAILURE TO PAY ALL WAGES TIMELY UPON SEPARATION OF**
5 **EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202,**
6 **AND 203**

7 **(Against All Defendants by Plaintiff and the Waiting Time Class)**

8 66. Plaintiff hereby incorporates by reference paragraphs 1-65 above, as if
9 fully set forth below.

10 67. At all times relevant to this Complaint, Plaintiff and members of the
11 Waiting Time Class were drivers employed by Defendants and covered by Labor
12 Code sections 201 and 202.

13 68. An employer is required to pay all unpaid wages timely after an
14 employee's employment ends. The wages are due immediately upon termination
15 (Labor Code section 201) or within seventy-two (72) hours of resignation (Labor
16 Code section 202). If an employee gave seventy-two (72) hours previous notice, they
17 were entitled to payment of all wages earned and unpaid at the time of resignation. *Id.*

18 69. Defendants failed to pay Plaintiff and on information and belief,
19 members of the Waiting Time Class, with all wages earned and unpaid prior to
20 separation of employment, in accordance with either Labor Code section 201 or 202.
21 Plaintiff is informed and believes and thereon alleges that at all relevant times within
22 the limitations period applicable to this cause of action, Defendants maintained a
23 policy or practice of not paying hourly employees all earned wages timely upon
24 separation of employment.

25 70. Defendants' failure to pay Plaintiff and members of the Waiting Time
26 Class with all wages earned prior to separation of employment timely in accordance
27 with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay
28 all wages earned by hourly workers prior to separation of employment in accordance

1 with Labor Code sections 201 and 202, but intentionally adopted policies or practices
2 incompatible with the requirements of Labor Code sections 201 and 202. Defendants'
3 practices include failing to pay at least minimum wage for all time worked, meal
4 period premium wages, and/or rest period premium wages. When Defendants failed
5 to pay members of the Waiting Time Class all earned wages timely upon separation
6 of employment, they knew what they were doing and intended to do what they did.

7 71. Pursuant to either Labor Code section 201 or 202, Plaintiff and members
8 of the Waiting Time Class are entitled to all wages earned prior to separation of
9 employment that Defendants have yet to pay them.

10 72. Pursuant to Labor Code section 203, Plaintiff and members of the
11 Waiting Time Class are entitled to continuation of their wages, from the day their
12 earned and unpaid wages were due until paid, up to a maximum of thirty (30) days.

13 73. As a result of Defendants' conduct, Plaintiff and members of the Waiting
14 Time Class have suffered damages in an amount, subject to proof, to the extent they
15 were not paid for all wages earned prior to separation.

16 74. As a result of Defendants' conduct, Plaintiff and members of the Waiting
17 Time Class have suffered damages in an amount, subject to proof, to the extent they
18 were not paid all continuation wages owed under Labor Code section 203.

19 75. Plaintiff and members of the Waiting Time Class are entitled to recover
20 the full amount of their unpaid wages, continuation wages under Labor Code section
21 203, and interest thereon.

22 **SIXTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

24 **(Against All Defendants by Plaintiff and the California Class)**

25 76. Plaintiff hereby incorporates by reference paragraphs 1-75 above, as if
26 fully set forth below.

27 77. The unlawful conduct of Defendants alleged herein constitutes unfair
28 competition within the meaning of Business and Professions Code section 17200.

1 This unfair conduct includes Defendants' use of policies, practices, and/or procedures
2 which resulted in: failure to pay employees at least at the minimum wage rate for all
3 hours which they worked; failure to authorize or permit all legally required and
4 compliant meal periods or pay meal period premium wages; failure to authorize or
5 permit all legally required and compliant rest periods or pay rest period premium
6 wages; failure to provide accurate wage and hour statements; and failure to timely pay
7 all wages due upon separation of employment. Due to their unfair and unlawful
8 business practices in violation of the Labor Code, Defendants have gained a
9 competitive advantage over other comparable companies doing business in the State
10 of California that comply with their obligations to pay minimum wages for all hours
11 worked; authorize or permit all legally required and compliant meal periods or pay
12 meal period premium wages; authorize or permit all legally required and compliant
13 rest periods or pay rest period premium wages; provide accurate wage and hour
14 statements; and timely pay all wages due upon separation of employment.

15 78. As a result of Defendants' unfair competition as alleged herein, Plaintiff
16 and members of the California Class have suffered injury in fact and lost money or
17 property, as described in more detail above.

18 79. Pursuant to Business and Professions Code section 17203, Plaintiff and
19 members of the California Class are entitled to restitution of all wages and other
20 monies rightfully belonging to them that Defendants failed to pay and wrongfully
21 retained by means of their unlawful and unfair business practices. Plaintiff also seeks
22 an injunction against Defendants on behalf of the California Class enjoining
23 Defendants, and any and all persons acting in concert with them, from engaging in
24 each of the unlawful policies, practices, and/or procedures set forth herein.

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**CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

80. Plaintiff hereby incorporates by reference paragraphs 1-79 above, as if fully set forth below.

82. During the one (1) year preceding the filing of the PAGA Claim Notice with LWDA, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 512, 1194, and 1197. Specifically, Defendants committed the following violations of the Labor Code:

84. Labor Code sections 1194 and 1197 require an employer to compensate employees for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the Wage Orders.

85. In this case, Plaintiff and other current and former aggrieved California-based hourly non-exempt drivers worked more minutes per shift than Defendants

1 credited them with having worked. Specifically, Defendants failed to pay Plaintiff and
2 other current and former aggrieved California-based hourly non-exempt drivers all
3 wages at the applicable minimum wage for all hours worked due to Defendants'
4 policies, practices, and/or procedures including, but not limited to: (1) requiring
5 Plaintiff and other current and former aggrieved California-based hourly non-exempt
6 drivers to undergo off-the-clock drug testing – without paying employees for such
7 time; (2) rounding down the hours worked by Plaintiff and other current and former
8 aggrieved California-based hourly non-exempt drivers to the nearest quarter of an
9 hour to the benefit of Defendants; (3) requiring Plaintiff and other current and former
10 aggrieved California-based hourly non-exempt drivers to work on-call – without
11 paying employees for such time; and (4) requiring Plaintiff and other current and
12 former aggrieved California-based hourly non-exempt drivers to guard their trucks
13 during their meal periods and stay within one hundred (100) feet of their trucks during
14 their meal periods – without paying employees for such time.

15 86. Defendants' aforementioned policies, practices, and/or procedures
16 resulted in time each day in which Plaintiff and other current and former aggrieved
17 California-based hourly non-exempt drivers were subject to the control of Defendants
18 without being compensated for that time, in violation of Labor Code sections 1194
19 and 1197 and the Wage Order.

20 87. **Failure to pay wages to hourly non-exempt drivers to compensate**
21 **them for workdays that Defendants failed to provide legally required and**
22 **compliant meal periods:** Defendants often employed hourly non-exempt employees,
23 including the named Plaintiff and other current and former aggrieved California-based
24 hourly non-exempt drivers, for shifts longer than five (5) hours.

25 88. California law requires an employer to authorize or permit an employee
26 an uninterrupted meal period of no less than thirty (30) minutes in which the employee
27 is relieved of all duties and the employer relinquishes control over the employee's
28 activities prior to the employee's sixth hour of work. Labor Code sections 226.7, 512;

1 Wage Order 9 at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th
2 1004. An employer may not employ an employee for a work period of more than ten
3 (10) hours per day without providing the employee with a second such meal period
4 of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.*

5 89. If an employer fails to provide an employee a meal period in accordance
6 with the law, the employer must pay the employee one (1) hour of pay at the
7 employee's regular rate of pay for each workday that a legally required and compliant
8 meal period was not provided. Labor Code section 226.7; Wage Order 9 at §11.

9 90. In this case, Defendants failed to authorize or permit all legally required
10 and compliant rest periods to Plaintiff and other current and former aggrieved
11 California-based hourly non-exempt drivers due to their policies, practices, and/or
12 procedures including, but were not limited to: (1) requiring Plaintiff and other current
13 and former aggrieved California-based hourly non-exempt drivers to guard their
14 trucks during their meal periods and to stay within one hundred (100) feet of their
15 truck during their meal periods, resulting in meal periods that were not duty-free; and
16 (2) failing to authorize or permit Plaintiff and similarly situated drivers a second
17 uninterrupted duty-free meal period of no less than thirty (30) minutes for shifts
18 exceeding ten (10) hours.

19 91. Additionally, Plaintiff alleges that Defendants maintained a policy,
20 practice, and/or procedure of failing to compensate Plaintiff and other current and
21 former aggrieved California-based hourly non-exempt drivers one (1) hour of pay at
22 their regular rate of pay for each workday that Plaintiff and other current and former
23 aggrieved California-based hourly non-exempt drivers did not receive all legally
24 required and compliant meal periods.

25 92. Defendants' foregoing policies, practices, and/or procedures resulted in
26 Plaintiff and other current and former aggrieved California-based hourly non-exempt
27 drivers not receiving wages to compensate them for workdays during which
28 Defendants did not provide them with all legally required and compliant meal periods

1 in compliance with California law.

2 **93. Failure to pay wages to hourly non-exempt drivers to compensate**
3 **them for workdays Defendants failed to provide required rest periods:**

4 Defendants often employed hourly non-exempt employees, including the named
5 Plaintiff and other current and former aggrieved California-based hourly non-exempt
6 drivers, for shifts of more than three-and-a-half (3.5) hours.

7 94. California law requires every employer to authorize and permit an
8 employee a rest period of ten (10) net minutes for every four (4) hours worked or
9 major fraction thereof. Labor Code section 226.7; Wage Order 9 at §12. Under
10 California law, “[e]mployees are entitled to 10 minutes’ rest for shifts from three and
11 one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10
12 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker*
13 *Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
14 section 226.7; Wage Order 9 at §12). Rest periods, insofar as practicable, shall be in
15 the middle of each work period. Wage Order 9 at §12. Additionally, the rest period
16 requirement “obligates employers to permit – and authorizes employees to take – off-
17 duty rest periods.” *Augustus v. ABM Security Services, Inc.* (2016) 5 Cal.5th 257, 269.
18 That is, during rest periods employers must relieve employees of all duties and
19 relinquish control over how employees spend their time. *Id.*

20 95. If the employer fails to authorize or permit a required rest period, the
21 employer must pay the employee one (1) hour of pay at the employee’s regular rate
22 of pay for each workday the employer did not authorize or permit a legally required
23 rest period. Labor Code section 226.7; Wage Order 9 at § 12.

24 96. In this case, Defendants failed to authorize or permit all legally required
25 and compliant rest periods to Plaintiff and other current and former aggrieved
26 California-based hourly non-exempt drivers due to their policies, practices, and/or
27 procedures including, but not limited to: (1) requiring Plaintiff and other current and
28 former aggrieved California-based hourly non-exempt drivers to guard their trucks

1 during their rest periods and stay within one hundred (100) feet of their truck, resulting
2 in rest periods that were not duty-free; and (2) failing to authorize or permit Plaintiff
3 and other current and former aggrieved California-based hourly non-exempt drivers
4 a third uninterrupted duty-free rest period of a net ten (10) minutes for shifts
5 exceeding ten (10) hours.

6 97. Additionally, Plaintiff alleges that Defendants maintained a policy,
7 practice, and/or procedure of failing to compensate Plaintiff and other current and
8 former aggrieved California-based hourly non-exempt drivers one (1) hour of pay at
9 their regular rate of pay for each workday that Plaintiff and other current and former
10 aggrieved California-based hourly non-exempt drivers did not receive all legally
11 required and compliant rest periods.

12 98. Defendants foregoing policies, practices, and/or procedures resulted in
13 Plaintiff and other current and former aggrieved California-based hourly non-exempt
14 drivers not receiving wages to compensate them for workdays in which Defendants
15 did not provide them with all legally required and compliant rest periods in
16 compliance with California law.

17 99. **Failure to timely pay earned wages during employment:** In
18 California, wages must be paid at least twice during each calendar month on days
19 designated in advance by the employer as regular paydays, subject to some
20 exceptions. Labor Code section 204(a). Wages earned between the 1st and 15th days,
21 inclusive, of any calendar month must be paid between the 16th and the 26th day of
22 that month and wages earned between the 16th and the last day, inclusive, of any
23 calendar month must be paid between the 1st and 10th day of the following month.
24 *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly,
25 must be paid within seven (7) calendar days following the close of the payroll period
26 in which wages were earned. Labor Code section 204(d).

27 100. As a derivative of Plaintiff's claims above, Plaintiff alleges that
28 Defendants failed to timely pay Plaintiff's and other current and former aggrieved

1 California-based hourly non-exempt drivers' earned wages (including minimum
2 wages), in violation of Labor Code section 204. Defendants' aforementioned policies,
3 practices, and/or procedures resulted in their failure to pay Plaintiff and other current
4 and former aggrieved California-based hourly non-exempt drivers their earned wages
5 within the applicable time frames outlined in Labor Code section 204.

6 **101. Failure to provide complete and accurate wage statements:** Labor
7 Code section 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*,
8 that, upon paying an employee his or her wages, the employer must "furnish each of
9 his or her employees ... an itemized statement in writing showing (1) gross wages
10 earned, (2) total hours worked by the employee, except for any employee whose
11 compensation is solely based on a salary and who is exempt from payment of overtime
12 under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
13 Commission, (3) the number of piece-rate units earned and any applicable piece rate
14 if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
15 deductions made on written orders of the employee may be aggregated and shown as
16 one item, (5) net wages earned, (6) the inclusive dates of the pay period for which the
17 employee is paid, (7) the name of the employee and his or her social security number,
18 (8) the name and address of the legal entity that is the employer, and (9) all applicable
19 hourly rates in effect during the pay period and the corresponding number of hours
20 worked at each hourly rate by the employee."

21 102. As a derivative of Plaintiff's allegations above, Defendants' failure to
22 pay Plaintiff and other current and former aggrieved California-based hourly non-
23 exempt drivers all wages earned (including minimum wages) rendered Plaintiff's and
24 other current and former aggrieved California-based hourly non-exempt drivers'
25 wage statements inaccurate, in violation of Labor Code section 226.

26 **103. Failure to pay employees all wages due at time of**
27 **termination/resignation:** An employer is required to pay all unpaid wages timely
28 after an employee's employment ends. The wages are due immediately upon

1 termination (Labor Code section 201) or within seventy-two (72) hours of resignation
2 (Labor Code section 202).

3 104. As a derivative of Plaintiff's allegations above, because Defendants
4 failed to pay Plaintiff and other current and former aggrieved California-based hourly
5 non-exempt drivers all their earned wages (including minimum wages), Defendants
6 failed to pay those drivers timely after each driver's termination and/or resignation,
7 in violation of Labor Code sections 201, 202, and 203.

8 105. Labor Code sections 2699, subdivisions (a) and (g) authorize an
9 aggrieved employee, on behalf of oneself and all other current or former employees,
10 to bring a civil action to recover civil penalties against all Defendants pursuant to the
11 procedures specified in Labor Code section 2699.3.

12 106. Plaintiff has complied with the procedures for bringing suit specified in
13 Labor Code section 2699.3. On September 29, 2020, Plaintiff filed an initial PAGA
14 Claim Notice with LWDA and gave notice to Defendants by certified mail, providing
15 notice of the specific provisions of the Labor Code alleged to have been violated and
16 including the facts and theories to support the violations alleged.

17 107. On November 20, 2020, Plaintiff filed an amended PAGA Claim Notice
18 with LWDA and gave notice to Defendants by certified mail, providing notice of the
19 specific provisions of the Labor Code alleged to have been violated and including the
20 facts and theories to support the violations alleged.

21 108. Pursuant to Labor Code section 2699.3, LWDA must give written notice
22 by certified mail to the parties that it intends to investigate the alleged violations of
23 the Labor Code within sixty-five (65) days of the date of the aggrieved employee or
24 representative's written notice and/or the employer may attempt to cure for certain
25 violations. LWDA failed to provide the parties notice within sixty-five (65) days of
26 the date of Plaintiff's initial PAGA Claim Notice that it intended to investigate
27 Plaintiff's claims and/or Defendants failed to cure any of the alleged violations which
28 could have been cured.

1 109. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks civil
2 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226,
3 226.7, 512, 1194, and 1197, for the one (1) year preceding the filing of the initial
4 PAGA Claim Notice with LWDA, in the following amounts:

5 a. For violations of Labor Code sections 201, 202, 203, 226.7, and
6 1197: one hundred dollars (\$100) for each employee per pay period for the initial
7 violation and two hundred dollars (\$200) for each employee per pay period for each
8 subsequent violation, as established by Labor Code section 2699(f)(2);

9 b. For violations of Labor Code section 204: one hundred dollars
10 (\$100) for any initial violation for each failure to pay each employee, and for each
11 subsequent violation, or any willful or intentional violation, two hundred dollars
12 (\$200) for each failure to pay each employee, plus twenty-five percent (25%) of the
13 amount unlawfully withheld, as established by Labor Code section 210;

14 c. For violations of Labor Code section 226, subdivision (a): two
15 hundred fifty dollars (\$250) for each employee for each pay period for the initial
16 violation, and for each subsequent violation, one thousand dollars (\$1,000) for each
17 underpaid employee for each pay period, as established by Labor Code section 226.3;

18 d. For violations of Labor Code section 226, subdivision (a): seven
19 hundred fifty dollars (\$750) for each employee, as established by Labor Code section
20 226, subdivision (f); and

21 e. For violations of Labor Code sections 512 and 1194: fifty dollars
22 (\$50) for each employee for each pay period for the initial violation, and for each
23 subsequent violation, one hundred dollars (\$100) for each underpaid employee for
24 each pay period, as established by Labor Code section 558.

25 110. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award
26 of reasonable attorneys' fees and costs in connection with his claims for civil
27 penalties.

28 ///

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF ON HIS OWN BEHALF AND ON BEHALF OF THOSE SIMILARLY SITUATED, PRAYS AS FOLLOWS:

ON THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, AND SEVENTH CAUSES OF ACTION:

1. That the Court determine that this action may be maintained as a class action (for the entire California Class and/or any and all of the specified sub-classes) pursuant to Code of Civil Procedure section 382 and any other applicable law;

2. That the named Plaintiff be designated as a class representative for the California Class (and all sub-classes thereof);

3. For a declaratory judgment that the policies, practices, and/or procedures complained herein are unlawful; and

4. For an injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in each of the unlawful policies, practices, and/or procedures set forth herein.

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the minimum wage provisions of the Labor Code and the IWC Wage Order as to Plaintiff and the Minimum Wage Class;

2. For damages, according to proof, including but not limited to unpaid wages;

3. For any and all legally applicable penalties;

4. For liquidated damages pursuant to Labor Code section 1194.2;

5. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 1194, and post-judgment interest;

6. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code section 1194;

7. For pre-judgment interest, including but not limited to that recoverable

under Labor Code section 218.6, and post-judgment interest; and

8. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE SECOND CAUSE OF ACTION:

1. That Defendants be found to have violated the meal period provisions of the Labor Code and the IWC Wage Order as to Plaintiff and the Meal Period Class;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and

5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE THIRD CAUSE OF ACTION:

1. That Defendants be found to have violated the rest period provisions of the Labor Code and the IWC Wage Order as to Plaintiff and the Rest Period Class;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and

5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FOURTH CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code regarding accurate itemized paystubs as to Plaintiff and the Wage Statement Class;

2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under Labor Code section 226, subdivision (e), and any other legally applicable damages or penalties;

- 1 3. For pre-judgment interest and post-judgment interest;
- 2 4. For an injunction against Defendants enjoining them, and any and all
- 3 persons acting in concert with them, from engaging in violations of Labor Code
- 4 section 226(a);
- 5 5. For attorneys' fees and costs of suit, including but not limited to that
- 6 recoverable under Labor Code section 226, subdivision (e); and
- 7 6. For such other further relief, in law and/or equity, as the Court deems
- 8 just or appropriate.

9 **ON THE FIFTH CAUSE OF ACTION:**

- 10 1. That Defendants be found to have violated the provisions of the Labor
- 11 Code regarding payment of all unpaid wages due upon resignation or termination as
- 12 to Plaintiff and the Waiting Time Class;
- 13 2. For damages and/or penalties, according to proof, including damages
- 14 and/or statutory penalties under Labor Code section 203 and any other legally
- 15 applicable damages or penalties;
- 16 3. For pre-judgment interest, including under Labor Code section 218.6,
- 17 and post-judgment interest; and
- 18 4. For such other further relief, in law and/or equity, as the Court deems
- 19 just or appropriate.

20 **ON THE SIXTH CAUSE OF ACTION:**

- 21 1. That Defendants be found to have violated Business and Professions
- 22 Code sections 17200, *et seq.*, for the conduct alleged herein as to the California Class;
- 23 2. A declaratory judgment that the practices complained herein are
- 24 unlawful;
- 25 3. An injunction against Defendants enjoining them, and any and all
- 26 persons acting in concert with them, from engaging in each of the unlawful practices,
- 27 policies and patterns set forth herein;
- 28 4. For restitution to the full extent permitted by law; and

1 For such other further relief, in law and/or equity, as the Court deems just or
2 appropriate.

3 **ON THE SEVENTH CAUSE OF ACTION:**

4 6. That Defendants be found to have violated the provisions of the Labor
5 Code and applicable IWC Wage Order as to Plaintiff and all other current and former
6 aggrieved California-based hourly non-exempt drivers;

7 2. For any and all legally applicable penalties during the relevant statute of
8 limitations subject to any permissible tolling, including but not limited to, those
9 recoverable under Labor Code sections 2699(a) and (f), 201, 202, 203, 204, 226,
10 226.7, 512, 1194, and 1197;

11 3. For attorneys' fees and costs of suit, including but not limited to those
12 recoverable under Labor Code section 2699(g); and

13 4. For other such further relief, in law and/or equity, as the Court deems
14 just or appropriate.

15
16 Dated: November __, 2021

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

17
18 By:

19 _____
20 Joseph Lavi, Esq.
21 Vincent C. Granberry, Esq.
22 Melissa A. Huether, Esq.
23 Courtney M. Miller, Esq.
24 Attorneys for Plaintiff CHRIS
25 BONSANGUE on behalf of himself
26 and other similarly situated drivers
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DEMAND FOR JURY TRIAL

Plaintiff CHRIS BONSANGUE demands a trial by jury for himself and the California Class on all claims so triable.

Dated: November ___, 2021

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: _____
Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Melissa A. Huether, Esq
Courtney M. Miller, Esq.
Attorneys for Plaintiff
CHRIS BONSANGUE on behalf of
himself and other similarly situated
drivers

Exhibit B

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Chris Bonsangue v. Ferrellgas, Inc., et al.

(U.S. District Court, Central District of California Case No. 2:20-cv-11169-FMO-RAO)

You are not being sued. This is not an ad. This notice affects your rights. Please read it carefully.

You have received this Notice of Class Action Settlement because Ferrellgas, Inc. (“Ferrellgas” or “Defendant”) records show you are what is called a “Class Member,” and therefore entitled to a payment from this class action settlement (“Settlement”). Class Members are all individuals who are or previously were employed by Ferrellgas in the State of California, who worked as a non-exempt driver at any time from October 2, 2016 through November 1, 2021, with the exception of individuals who were employed by Ferrellgas in the position of Driver Bulk & Cylinder, Driver I Cylinder A, Driver I Bulk & Cylinder B, Driver Tank Exchange, and/or Driver II Transport A only, and at no time on or after September 15, 2019, whose claims were released pursuant to the settlement in *Price v. Ferrellgas, Inc.*, Southern District of California Case No. 37-2018-00022075-CU-OE-CTL.

On [date of preliminary approval], Honorable Fernando M. Olguin, U.S. District Court Judge for the Central District of California, granted preliminary approval of this class action Settlement and ordered that all Class Members be notified of the Settlement.

Unless you choose not to participate in the Settlement (in other words, you choose to “opt out”) by following the procedures described below, you will be considered a Participating Class Member, and if the Court grants final approval of the Settlement, you will be mailed a check for your share of the Settlement fund. The Final Fairness and Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at [redacted] .m. on [redacted], in Courtroom 6D of the United States District Court for the Central District of California, located at 350 W. 1st Street, 6th Floor, Los Angeles, CA 90012. You are not required to attend the Hearing, but you are welcome to do so. You may enter an appearance through an attorney at your own expense if you desire.

What Is This Case About?

Chris Bonsangue is a former employee of Ferrellgas. He is the “Plaintiff” in this case and is suing on behalf of himself and all Class Members. Plaintiff sued Ferrellgas claiming that he and Class Members were not paid all earned wages and did not receive all required meal and rest breaks, all wages were not paid upon separation of employment, and paystubs did not contain all required information required by law. Plaintiff further alleges that as a result, Ferrellgas also engaged in unfair competition, and is liable for associated penalties under the California Labor Code and California Private Attorneys General Act of 2004 (“PAGA”).

Ferrellgas strongly denies that it has engaged in any alleged unlawful conduct. Ferrellgas asserts that it has compensated its employees properly and has provided all required meal and rest breaks.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Ferrellgas further asserts it has and had during the Class Period lawful wage and hour policies, practices and procedures. The Court has made no ruling on the merits of Plaintiff's claims.

Plaintiff entered into settlement discussions with Ferrellgas in an attempt to resolve the disputed claims in this case. On September 2, 2021, the parties negotiated a settlement on behalf of themselves and the Class Members with the assistance of a mediator. The parties' agreement has been documented in a Joint Stipulation of Class Action Settlement and Release ("Joint Stipulation"). The Court has only preliminarily approved the Joint Stipulation. The Court will decide whether to give final approval to the Settlement at the Final Fairness and Approval Hearing.

Attorneys for Plaintiff and the Class Members ("Class Counsel") are:

Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Courtney M. Miller, Esq.
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001

Class Counsel have investigated and researched the facts and circumstances underlying the issues raised in this case and the applicable law. While Class Counsel believe Plaintiff's claims in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Because of this, Class Counsel believe the proposed Settlement is fair, adequate, reasonable, and in the best interests of the Class Members.

Ferrellgas has strongly denied, and continues to deny, Plaintiff's factual and legal allegations. Ferrellgas believes this case has no merit. By agreeing to settle, Ferrellgas is not admitting liability on any of the factual or legal allegations or claims in this case or that this case can or should proceed as a class action.

Summary of the Settlement Terms

Plaintiff and Ferrellgas have agreed to settle this case on behalf of themselves and the Class Members in exchange for the Maximum Settlement Amount of \$190,000.00. The Maximum Settlement Amount includes: (1) Individual Settlement Payments to Participating Class Members; (2) a \$5,000 service payment to Plaintiff for Plaintiff's time and effort in pursuing this case; (3) Settlement Administration Costs estimated to be no more than \$7,500; (4) a \$14,250 payment to the California Labor and Workforce Development Agency and a \$4,750 payment to be distributed equally to all Class Members who were employed by Ferrellgas during the period from September 29, 2019 through November 1, 2021 ("PAGA Group Members") (collectively, the "PAGA Settlement Amount") for settlement of the PAGA claims; (5) subject to Court approval of an application for fees and costs, an award of up to \$62,700 in attorneys' fees and up to \$10,000 in litigation costs and expenses to Class Counsel; and (6) Ferrellgas' share of payroll taxes for the portion of the Individual Settlement Payments allocated to wages. After deducting the service

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

payment to Plaintiff, the Settlement Administration Costs, the payment to the California Labor and Workforce Development Agency, attorneys' fees and costs/expenses, and payroll taxes, a total of approximately \$ [REDACTED] will be available to Class Members who do not opt out of the Settlement ("Net Settlement Amount").

Plan of Distribution to Class Members

Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of weeks a Participating Class Member worked during the Class Period ("Workweeks"). Specific calculations of Individual Settlement Payments will be made as follows:

- a. The Settlement Administrator will calculate the number of Workweeks per Participating Class Member during the Class Period. The Class Period is from October 2, 2016 through November 1, 2021. Ferrellgas' Workweek data will be presumed to be correct, unless a particular Class Member proves otherwise to the Settlement Administrator by credible written evidence. All Workweek disputes will be resolved and decided by the Settlement Administrator in consultation with Class Counsel and counsel for Defendant, and the Settlement Administrator's decision on all Workweek disputes will be final and non-appealable.
- c. The Settlement Administrator will calculate the total number of Workweeks for each individual Class Member ("Individual Workweeks"). The Settlement Administrator will calculate the total number of Workweeks for all Class Members during the Class Period ("Class Workweeks").
- d. To determine each Class Member's "Individual Settlement Payment" the Settlement Administrator will use the following formula: Individual Settlement Payment = (Net Settlement Amount ÷ Class Workweeks) x Individual Workweeks for each individual Participating Class Member.

According to Ferrellgas's records, you worked [REDACTED] Workweeks during the Class Period. Accordingly, your estimated payment is approximately \$ [REDACTED].

If you believe the information provided above as to the number of your Individual Workweeks is incorrect and wish to dispute it, please contact the Settlement Administrator at [REDACTED] no later than [Response Deadline]. If you dispute the information stated above, the information Ferrellgas provided to the Settlement Administrator will control unless you are able to provide documentation that establishes otherwise. Any disputes, along with supporting documentation ("Disputes"), must be postmarked no later than [Response Deadline]. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

In addition, all PAGA Group Members will receive an Individual PAGA Settlement Payment regardless of whether or not they opt out of the Settlement in exchange for their release the claims alleged in this lawsuit under PAGA. To determine each PAGA Group Member's Individual PAGA Settlement Payment, the Settlement Administrator will use the following formula:

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Individual PAGA Settlement Payment = (Net PAGA Settlement Amount ÷ Total PAGA Pay Periods) x Individual PAGA Pay Periods.

Class Member Tax Matters

IRS Forms W-2 and 1099-MISC will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments Class Members receive under the Settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this Settlement, 15% of each Individual Settlement Payment will be allocated to alleged unpaid wages, 42.5% will be allocated as alleged unpaid interest, and the remaining 42.5% will be allocated as alleged unpaid civil penalties and reimbursement. Individual PAGA Settlement Payments will be designated 100% penalties and be reported on an IRS Form 1099. Again, please consult a tax advisor regarding the significance of how each Individual Settlement Payment is allocated between wages, penalties, and interest. This notice is not intended to provide legal or tax advice. To the extent this notice or any of its attachments is interpreted to contain or constitute advice regarding any United States or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If want to receive your payment from the Settlement, then no further action is required on your part. You will automatically receive your Individual Settlement Payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1** and the Court grants final approval of the Settlement, you will be mailed a check for your share of the Settlement funds. In addition, you will be deemed to have released or waived the following claims (“Released Claims”):

All claims under state, federal or local law, whether statutory, common law or administrative law arising out of or related to all claims and allegations made or which could have been made in the Action from October 2, 2016 through November 1, 2021, including allegations of alleged: meal period violations; rest period violations; failure to pay wages; wage statement violations; waiting time penalties; civil penalties, including penalties under the California Private Attorneys General Act of 2004 (“PAGA”); violations of Business and Professions Code section 17200; including, but not limited to, claims for injunctive relief; punitive damages; liquidated damages, penalties of any nature; interest; fees; and costs (“Released Claims”).

Released Parties means:

(i) Defendant; (ii) each of Defendant’s respective past, present and future parents, subsidiaries, divisions, concepts, related and affiliate companies including, without

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

limitation, any corporation, limited liability company, partnership, trust, foundation, and non-profit entity which controls, is controlled by, or is under common control with Defendant; (iii) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, payroll service providers, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Settlement, you may exclude yourself from participating by completing and submitting the “Request for Exclusion from Class Action Settlement” form enclosed with this notice to the Settlement Administrator postmarked no later than [Response Deadline]. Your written request must expressly and clearly state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE CHRIS BONSANGUE. V. FERRELLGAS, INC., ET AL. 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.”

The written request for exclusion must include your name, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail your written request for exclusion by U.S. First-Class Mail or equivalent, to the address below.

Settlement Administrator
c/o [Name]
[Address]

Telephone: 1-888-XXX-XXXX

The written request to be excluded from the Settlement must be postmarked to the Settlement Administrator not later than [Response Deadline]. If you submit a request for exclusion which is not postmarked by [Response Deadline], your request for exclusion will be rejected, and you will be included in the Settlement Class. **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.

If you choose **Option 2**, you will no longer be a Class Member. You will still receive your Individual PAGA Settlement Payment in exchange for your release of the claims alleged in this lawsuit under PAGA and be bound by the judgment in this case regarding the PAGA claims, but you will not be deemed to have released any other claims due to this Settlement or bound by any other aspect of the judgment in this case.

Option 3 – File an Objection to the Settlement

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

If you wish to object to the Settlement, you should mail a written objection to the Settlement Administrator. Your objection should provide: your full name, address and telephone number, the last four digits of your Social Security Number, the dates you were employed by Ferrellgas in California, and your objections to the Settlement including each specific reason in support of each objection and any legal support for each objection together with any evidence in support of your objection. Your objection should be mailed to the Settlement Administrator on or before [Response Deadline].

You may also appear at the Final Fairness and Approval Hearing set for _____ at _____ .m. in Courtroom 6D of the United States District Court for the Central District of California, located at 350 W. 1st Street, 6th Floor, Los Angeles, CA 90012, and discuss your objections with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the Hearing at your own expense. All objections or other correspondence must state the name and number of the case, which is *Chris Bonsangue v. Ferrellgas, Inc. et al.*, U.S. District Court, Central District of California Case No. 2:20-cv-11169-FMO-RAO.

If you choose **Option 3**, you will still be entitled to the money from the Settlement. You will remain a member of the Settlement Class, and if the Court overrules your objections and approves the Settlement, you will receive both your Individual Settlement Payment and Individual PAGA Settlement Payment and will be bound by the terms of the Settlement in the same way as Class Members who do not object, including being deemed to have released the Released Claims. You cannot both object to the settlement and exclude yourself. You must choose one option only.

Additional Information

At the Final Fairness and Approval Hearing, the Court will also decide the amounts of attorneys' fees, litigation costs, and service payment to award. Plaintiff is required to file Plaintiff's motion for an award of attorneys' fees, litigation costs, and service payment ("Fee Motion") by [date]. If you would like a copy of the Fee Motion, you may contact Class Counsel and a copy will be provided to you.

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may refer to the pleadings, the Joint Stipulation of Settlement, and other papers filed in this case, which may be inspected at the Office of the Clerk of the of the United States District Court for the Central District of California, located at 350 W. 1st Street, Los Angeles, CA 90012, during regular business hours of each court day.

All questions by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator or Class Counsel.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, FERRELLGAS, OR FERRELLGAS' ATTORNEYS WITH QUESTIONS.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

REQUEST FOR EXCLUSION FROM CLASS ACTION SETTLEMENT

Chris Bonsangue v. Ferrellgas, Inc., et al.
(U.S. District Court, Central District of California Case No. 2:20-cv-11169-FMO-RAO)

If you do not want to be part of the Settlement, you must complete and submit this written request to be excluded from the Settlement ("Request for Exclusion") by mail to the Settlement Administrator on or before **[Response Deadline]** at:

Bonsangue v. Ferrellgas Settlement Administrator

c/o _____

The Request for Exclusion must be postmarked to the Settlement Administrator not later than **[Response Deadline]**. If you submit a request for exclusion which is not postmarked by **[Response Deadline]**, your request for exclusion will be rejected, and you will be included in the Settlement Class and be bound by the terms of the Settlement.

If you complete and timely submit this Request for Exclusion, you will no longer be a Class Member. You will still receive your Individual PAGA Settlement Payment in exchange for your release of the claims alleged in this lawsuit under PAGA and be bound by the judgment in this case regarding the PAGA claims, but you will not receive your separate Individual Settlement Payment, be deemed to have released any other claims due to this Settlement or bound by any other aspect of the judgment in this case.

By submitting this form, you are stating: "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE CHRIS BONSANGUE. V. FERRELLGAS, INC., ET AL. 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."

In order to be valid, you must provide the following information and sign below:

Full name: _____

Address: _____

City, State, Zip Code:

Last four digits of your social security number: _____

Your Signature: _____

Questions? Contact the Settlement Administrator toll free at 1-*-***-******