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

DANIEL STEPHENSON, an individual, on
behalf of himself and others similarly situated,

PLAINTIFF,

v.

BAKERSFIELD DODGE, INC.; and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO.: BCV-20-102693

[Case Assigned for All Purposes to Hon. Judge
Thomas S. Clark in Dept. 17]

**DECLARATION OF KELSEY M.
SZAMET IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

*[Filed concurrently with Motion for
Preliminary Approval of Settlement and
[Proposed] Order Thereon]*

Date: March 23, 2022
Time: 8:30 a.m.
Dept.: 17

Complaint Filed: November 18, 2020
FAC Filed: February 18, 2021
Trial Date: None Set

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I, Kelsey M. Szamet, state and declare as follows:

1. I am an attorney admitted before all courts of the State of California and a partner in the law firm of Kingsley & Kingsley, APC, counsel of record for Plaintiff in this action. I am completely familiar with the present litigation, including the pleadings, discovery, and filings submitted in this matter. I make this Declaration from my own personal knowledge, and, if called upon, I could and would competently testify to the following.

2. I graduated cum laude from the University of California, San Diego in 2004 with a degree in Human Development. I graduated from the University of California, Los Angeles School of Law in 2008. I am admitted to practice before the following Courts: United States Supreme Court; United States District Court, Northern, Eastern, Southern and Central of California; all California State Courts.

3. I make this Declaration in support of Plaintiff's Motion for Preliminary Approval of the Class Action Settlement in the above-captioned case.

RELEVANT PROCEDURAL HISTORY

4. On November 18, 2020, Plaintiff filed a notice with California’s Labor and Workforce Development Agency (“LWDA”) regarding his intent to file an action seeking civil penalties under the Labor Code Private Attorney General Act of 2004, § 2699, et seq. (“PAGA”).

5. On November 18, 2020, Plaintiff DANIEL STEPHENSON filed a Class Action Complaint entitled *DANIEL STEPHENSON, an individual, on behalf of himself and others similarly situated v. BAKERSFIELD DODGE, INC.*; and Does 1 thru 50, inclusive, Case No. BCV-20-102693 in the Kern County Superior Court (“Action” or “Lawsuit”).

6. The Action alleges two claims: (1) failure to issue accurate itemized wage statements in compliance with Labor Code §226(a); and (2) violations of Labor Code section 2699, *et seq.* (“PAGA”).

7. On February 18, 2021, Plaintiff filed the First Amended Complaint (“FAC”), adding his PAGA claim, after the pre-filing notice period had lapsed.

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1 of relevant pay periods.

2 14. The proposed Settlement Class contains approximately 98 hourly employees.

3 15. The proposed Settlement Class is ascertainable and sufficiently numerous.

4 16. Plaintiff argues that there are questions of law and fact common to the proposed
5 Settlement Class that predominate over any questions affecting only individual Class Members.

6 17. Plaintiff alleges that Settlement Class Members worked in the same capacity for
7 the same employer and were subject to the same relevant employment policies and practices,
8 namely the uniform failure to provide compliant itemized wage statements under Labor Code §
9 226(a)(2) and (9) by failing to include the total hours worked by Class Members, the corresponding
10 rates and the number of hours worked at each corresponding rate during the pay period.

11 18. Plaintiff contends that the evidence reviewed by Class Counsel demonstrates that
12 common wage policies applied to the proposed Settlement Class Members and certification for
13 settlement purposes is appropriate.

14 19. Plaintiff worked for Defendant as a non-exempt hourly employee and contends that
15 he did not receive accurate itemized wage statements because he alleges that Defendant failed to
16 show the total hours worked by Plaintiff, the applicable hourly rates in effect during the pay period,
17 and the corresponding number of hours worked at each hourly rate by Plaintiff.

18 20. Plaintiff believes that his claims are typical of those of the Settlement Class.

19 21. Plaintiff believes that he is capable of fairly representing and adequately protecting
20 the interests of the proposed Settlement Class Members. Plaintiff's interests in this litigation are
21 coextensive with the interests of the proposed Settlement Class Members.

22 22. The members of the proposed Settlement Class all worked for Defendant during
23 the relevant time period and incurred the same type of alleged damages with regard to Defendant's
24 alleged violations of the law.

25 23. Plaintiff has agreed to serve as class representative and has retained qualified
26 counsel who is experienced in prosecuting wage and hour class actions.

27 24. This demonstrates Plaintiff's commitment to bringing about the best possible
28 results for the benefit of the proposed Settlement Class.

1 25. Plaintiff has provided Class Counsel with all necessary and pertinent information.

2 26. Plaintiff has actively participated in this litigation and worked closely with Class
3 Counsel to develop theories of liability.

4 27. Plaintiff was informed of and involved in all of the Settlement negotiations.

5 28. Plaintiff believes that he will continue to adequately represent the proposed
6 Settlement Class Members.

7 29. Plaintiff contends the superiority of class treatment is evident here because
8 individual pursuit of class members' claims may not be economically viable.

9 30. The only alternative to certification would be to force over 90 employees to join
10 this action, file individual, uniform actions, or abandon their legal rights altogether.

11 31. Plaintiff maintains that this economic reality could result in a windfall for
12 Defendant if this case were not certified.

13 **THE PROPOSED SETTLEMENT**

14 32. For purposes of Settlement, the Class Members are defined as: "all persons who are
15 employed or have been employed as an hourly employee by BAKERSFIELD DODGE, INC., in
16 the State of California who worked one or more pay periods during the Class Period."

17 33. The Class Period is November 18, 2019 through March 25, 2021.

18 34. Based on documents and other information produced by Defendant, there are
19 approximately 98 Class Members and there is a maximum of 2,018 pay periods during the Covered
20 Period that are at issue.

21 35. As detailed fully in the Settlement Agreement the Settlement provides for
22 Defendant to pay a Gross Settlement Amount of \$50,000.00, which includes the sum of the
23 Individual Settlement Payments, the Class Representative Enhancement, the Class Counsel
24 Award, the PAGA Payment, and the Settlement Administration Costs.

25 36. The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel
26 Award, Class Representative Enhancement, Class Counsel's Fees, Class Counsel's Costs, the
27 PAGA Payment, and Settlement Administration Costs.

28 ///

KULLAR ANALYSIS

37. Class Counsel conducted informal discovery before entering into meaningful settlement negotiations in this matter.

38. This informal discovery and settlement negotiations permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation.

39. Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Settlement.

40. The gravamen of Plaintiff's complaint is that Defendant issued itemized wage statements that fail to show the total hours worked by the employee, the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code §226(a)(2), (9).

41. Plaintiff was confident that he could establish that Defendant violated Labor Code § 226(a) on a class wide basis.

42. There were certainly risks to be weighed in moving forward with litigation.

43. Defendant maintained that Plaintiff was required to show injury per the Labor Code § 226 (e)(1) and that Plaintiff could not articulate a cognizable injury here. ["An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."]

44. Plaintiff maintains that pursuant to Labor Code § 226(e)(2)(B) injury is presumed by virtue of an employer failing to provide a properly itemized wage statement. ["An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone... information required to be provided".]

45. Plaintiff certainly anticipated that Defendant would argue Plaintiff could "promptly

1 and easily” determine the total hours Plaintiff worked, applicable hourly rates in effect during the
2 pay period and the total corresponding number of hours worked at each hourly rate by Plaintiff by
3 reviewing Plaintiff’s paystubs and completing simple calculations based on the gross wages paid
4 from the face of the wage statement alone.

5 46. Contrary to Defendant’s anticipated argument, Plaintiff maintains that Plaintiff
6 would have to look at documents outside the four corners of the wage statement, and have to
7 engage in discovery and perform complex mathematical calculations to reconstruct time records
8 in order to determine if he was correctly paid for all hours worked at the appropriate rate of pay,
9 thus having suffered injury under Section 226.

10 47. Plaintiff perceived little risk that he would not be able to establish injury.

11 48. Most importantly from a risk analysis perspective, however, is Plaintiff’s ability to
12 show that any alleged Section 226(a) violation was “knowing and intentional.”

13 49. Defendant maintained that if a Court determined that there was any violation, it
14 would be only a technical violation of Labor Code § 226(a)(2) and (9) that did not merit the
15 imposition of penalties.

16 50. Plaintiff anticipated that at trial, Defendant would argue that any alleged violation
17 was the result of a clerical oversight and, accordingly, Plaintiff could not prove the violation was
18 “knowing and intentional.”

19 51. Consequently, if Defendant could make a potentially persuasive argument that if
20 Defendant did not act knowingly or intentionally there would be no penalties available under Labor
21 Code § 226(e) to the Class Members.

22 52. While Class Counsel maintains that it could establish that the alleged violation was
23 “knowing and intentional,” nonetheless Class Counsel had to recognize that there was risk that a
24 trier of fact might ultimately be swayed by Defendant’s arguments.

25 53. For the purposes of a PAGA claim under Labor Code section 2699, Plaintiff
26 contends that it is immaterial whether Plaintiff and the aggrieved employees suffered an injury as
27 defined by Labor Code § 226(e).

28 54. Recent case law makes it quite clear that there is no question that, for a PAGA

claim, an employer's failure to include the required information alone triggers liability and entitles Plaintiff and other aggrieved employees to recover civil penalties.

55. The aggrieved employees' PAGA claims are arguably derivative of all the foregoing class claims.

56. A court has discretion to award less than the maximum penalty.

57. The Settlement Class is compensated for these violations in the proposed Joint Stipulation of Settlement, and thus any PAGA recovery for these same violations could arguably be construed as duplicative.

58. Plaintiff contends that the Settlement's contemplated PAGA payment of \$4,000 is appropriate.

59. There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated settlement now.

60. If the Court did eventually certify a class, trial of a case involving approximately 98 Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties.

61. Given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay for the Class Members who are waiting for a resolution in this matter.

62. This case has not been certified to be tried as a class action. While Plaintiff believes there is strong evidence to support certification of several classes and subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. In attempting to certify a class, the Parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant's policies. There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected.

63. It was very difficult for the Parties to reach this Settlement of \$50,000.00.

64. This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. The Parties arrived at it after extensive informal discovery and settlement

1 negotiations, careful evaluation of the law, risks, and all information substantiating the amount of
2 penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable.

3 65. *Amaral* certainly is not directly on point as it is not discussing the penalty
4 provisions of Labor Code §226(e), but another Labor Code statute altogether. However, there is
5 a dearth of legal authority and Plaintiff's Counsel is not aware of any other case that sheds more
6 light on the issue than *Amaral*.

7 66. It could be argued that the plain language speaks for itself and "initial" means first
8 and "subsequent" means any itemized wage statements issued thereafter.

9 67. The main risk taken into account with PAGA is the discretionary nature of the
10 penalty award.

11 68. Per Labor Code §226, a judge can award the statutory maximum of \$50 for the
12 initial violation and \$100 thereafter or – in theory – one cent per wage statement.

13 69. While there is a dearth of available authority, in Plaintiff's view it is not likely that
14 a Judge would award the maximum amount of penalties.

15 70. In addition, the "subsequent" amounts under Labor Code §226(e) and PAGA have
16 recently been called into question.

17 71. Under this new ruling, Defendant would certainly argue that it had not received
18 formal "notice" and the \$50 penalty was the maximum potential amount per pay period.

19 72. Defendant would certainly argue the same legal analysis applies to the "initial" and
20 "subsequent" amounts available under Labor Code §226(e).

21 73. As a result of this risk and the risks on the merits discussed above, Class Counsel
22 believes the Gross Settlement Amount of \$50,000.00 is fair and reasonable.

23 74. As outlined above, Class Counsel conducted a thorough investigation into the facts
24 of the claims alleged. The agreement to settle did not occur until Class Counsel exchanged and
25 possessed sufficient information to make an informed judgement regarding the likelihood of
26 success on the merits and the results that could be obtained through further litigation.

27 **ATTORNEY COMPETENCE**

28 75. Kingsley & Kingsley is experienced in prosecuting employment litigation, and

1 since 2000 we have focused our practice on wage, hour, and working condition violations. My
2 firm is extremely well-versed in class action litigation and has diligently and aggressively pursued
3 this action. Kingsley & Kingsley currently serves as class counsel for several dozens of pending
4 class action lawsuits in Northern, Central, Eastern, and Southern California in both State and
5 Federal Court. Below is a small, but representative sampling of wage and hour cases handled by
6 my firm:

- 7 a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January
8 2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount
9 of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.
- 10 b. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In
11 December 2005, Honorable Rita Miller granted final approval of Settlement in the
12 gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.
- 13 c. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the
14 Honorable Conrad R. Aragon granted final approval of Settlement in the gross
15 amount of \$1,000,000 and the court granted attorneys' fees request of 30%.
- 16 d. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March
17 2008, the Honorable Mary Thornton House granted final approval of Settlement in
18 the gross amount of \$1,675,000.00 and the court granted attorneys' fees request of
19 33 1/3%.
- 20 e. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September
21 2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the
22 gross amount of \$2,000,000.00, and the court granted attorneys' fees request of
23 33.3%.
- 24 f. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In
25 March 2012, the Honorable James P. Kleinberg granted final approval of
26 Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys'
27 fees request of 33.3%.
- 28 g. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No.

BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund granted final approval of Settlement in the gross amount of \$4,700,000.00, and the court granted attorneys' fees request of 38%.

h. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January 2014, the Honorable William F. Highberger granted final approval of Settlement in the gross amount of \$1,500,000.00 and the court granted attorneys' fees request of 33.33%.

i. *Rojas, et al. v. Sunview Vineyards of California, Inc.*, Eastern District (1:09-cv-00705 AWIJLT). This certified class action was approved for final settlement by the Honorable Anthony W. Ishii in October 2015, in the gross amount of \$4,550,000.00, with attorneys' fees approved in the amount of \$1,137,500.00.

j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super. Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement in the gross amount of \$995,000.00, and the court granted attorney's fees request of 33.33%.

k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March 2016 after a class trial with a verdict in the class's favor, the Honorable Daniel P. Maguire, awarded Kingsley & Kingsley and co-counsel \$996,232.72 in attorney's fees.

l. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.) In June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorney's fees request of 33.33%.

m. *Isaguirre v. Guess?, Inc., Los Angeles Superior Court (BC357631)*. The matter was proposed for final settlement by the Honorable Richard L. Fruin on February 19, 2016, in the gross amount of \$5,250,000.

n. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (BC402739). The matter was approved for final settlement by the Honorable Lee Smally Edmund

1 in June 2013, in the gross amount of \$4,700,000.00, with attorney's fees request of
2 38%.

3 o. *Munoz, et al. v. Giumarra Vineyards Corporation*, United States District Court for
4 the Eastern District of California (Case No.: 1:09-cv-00703 - AWI – JLT). The
5 matter was approved for final settlement by the Honorable Anthony W. Ishii in
6 November 2017, in the gross amount of \$6,100,000.00, plus interest, with
7 attorney's fees benchmark award of \$1,525,000.

8 p. *Pineda, et al. v. Grimmway Enterprises, Inc.*, Kern County Superior Court (BCV-
9 15-101333). The matter was approved for final settlement before the Hon. Stephen
10 D. Schuett, Dept. 10, in January 2018, in the gross amount of \$9,000,000 with
11 attorneys' fees request of 33.33%.

12 76. Kingsley & Kingsley filed its first class certification motion in the year 2000 and
13 since that time has been appointed class counsel on dozens of wage and hour class actions that
14 have been approved for class certification. Since 2012, Kingsley & Kingsley, APC has moved for
15 class certification in 15 matters and has successfully obtained class certification in 15 of those
16 cases. A brief sampling of which includes:

- 17 a. *Lewis v. Collabrus, Inc., Santa Clara County Superior Court (109CV-142927)*,
18 *approved for Class Certification in 2011.*
- 19 b. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Ct., filed
20 December 19, 2012) (court granted contested class certification and appointed
21 Kingsley & Kingsley as class counsel).
- 22 c. *Amaro, et al v. Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB (E.D. Cal.,
23 filed February 3, 2014) (court granted contested class certification and appointed
24 Kingsley & Kingsley as class counsel).
- 25 d. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct.,
26 filed January 27, 2015) (court granted contested class certification and appointed
27 Kingsley & Kingsley as class counsel).
- 28 e. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court (16 C 0214).

1 contested class certification granted in June 2020.

2 f. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court
3 (BCV-16-102833), contested class certification granted in 2018.

4 g. *Patton v. Skyler Electric*, Nevada County Superior Court, (CU17-082544),
5 contested class certification granted in June 2020.

6 h. *Hameister v. Jaco Oil Company*, Kern County Superior Court (BCV-17-102876),
7 contested class certification granted in August 2020.

8 77. Class Counsel is experienced in the handling of wage and hour class actions and
9 supports this Settlement. Based on its analysis, Class Counsel believes that this settlement is fair
10 and reasonable and in the best interest of the Class.

11 78. After factoring in the risks explained above, Class Counsel believes that the
12 proposed settlement is fair and reasonable.

13 79. There is no governmental participant in this action except, arguably, the LWDA as
14 there is a PAGA claim at issue.

15 80. Since the proposed settlement is only at the preliminary approval stage, Notice has
16 not yet been disseminated to the Class.

17 81. Nonetheless, Plaintiff has every reason to believe the proposed Settlement will be
18 well received by the Class.

19 82. At the final approval state, Plaintiff will provide detailed information regarding the
20 reaction of the Class to the proposed Settlement.

21 83. This allocation distributes Settlement funds proportionally to each Class Member's
22 potential damages and should therefore be approved as fair, adequate, and reasonable.

23 **SERVICE AWARD TO THE NAMED PLAINTIFF**

24 84. Class Counsel requests an enhancement for Plaintiff's effort and time expended in
25 this matter. The time spent by DANIEL STEPHENSON includes providing information to Class
26 Counsel regarding the nature of the work at BAKERSFIELD DODGE, INC., compiling
27 documents, meeting with his attorneys to discuss the status of the case, the theories of liability,
28 and responding promptly to Class Counsel's communications regarding settlement.

1 85. Class Counsel considers this to be a fair and reasonable enhancement. The
2 enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming
3 forward to litigate this matter on behalf of all Class Members. Plaintiff will provide a detailed
4 declaration with the Final Approval Motion detailing his participation and further justification for
5 the enhancement.

6 **SUBMISSION TO THE LABOR WORKFORCE DEVELOPMENT AGENCY**

7 86. Proof of submission of Plaintiff's Motion, all related documents, and copy of the
8 email from the LWDA confirming receipt is attached hereto as Exhibit "2."

9 **EXHIBITS**

10 87. Attached hereto as Exhibit "1" is a true and correct copy of the fully executed Joint
11 Stipulation of Class Action Settlement and Release of Claims ("Settlement" or "Settlement
12 Agreement").

13 88. Attached hereto as Exhibit "2" is a true and correct copy of the proof of submission
14 of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming
15 receipt.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 This Declaration was executed this 28th day of February, 2022, in Altadena, California.

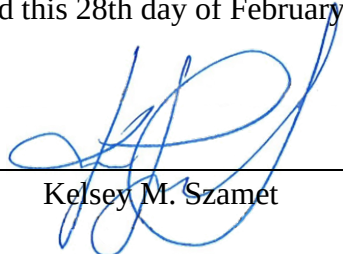
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22 _____
23 Kelsey M. Szamet
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EXHIBIT "1"

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

DANIEL STEPHENSON an individual, on
behalf of himself and others similarly situated

PLAINTIFF,

v.

BAKERSFIELD DODGE, INC.; and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO. BCV-20-102693

[Case Assigned for All Purposes to Hon. Judge
Thomas S. Clark in Dept. 17]

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE
OF CLAIMS**

1 This Joint Stipulation of Class Action Settlement and Release of Claims is entered into by
2 and between Plaintiff DANIEL STEPHENSON, individually and on behalf of the Settlement Class
3 and the State of California, as a private attorney general, on the one hand, and Defendant
4 BAKERSFIELD DODGE, INC. on the other hand.

5 This Joint Stipulation of Class Action Settlement and Release of Claims shall be binding
6 on Plaintiff, the current and former employees s/he seeks to represent, the Settlement Class, and
7 on Defendant and subject to the definitions, recitals, and terms set forth herein and the approval of
8 the Court.

9 **I. DEFINITIONS**

10 **1. Action**

11 “Action” or “Lawsuit” means the civil action filed in the Superior Court of the State of
12 California for the County of Kern, entitled DANIEL STEPHENSON, an individual, on behalf of
13 himself and others similarly situated, Plaintiff v. BAKERSFIELD DODGE, INC., and Does 1 thru
14 50, inclusive, Defendants, Case No. BCV-20-102693 filed on November 18, 2020.

15 **2. Class Counsel**

16 “Class Counsel” means Kingsley & Kingsley, APC, who, subject to Court approval, shall
17 act as counsel for the Settlement Class.

18 **3. Class Counsel Award**

19 “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution
20 of this Lawsuit, and Class Counsel’s expenses and legal costs incurred in connection with this
21 Lawsuit.

22 **4. Class Information**

23 “Class Information” or “Class Data” means information regarding Settlement Class
24 members that Defendant will in good faith compile from their records and provide to the
25 Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include:
26 each Settlement Class Member’s full name; last known address; last known home telephone
27 number; social security number; dates of employment, and number of pay periods worked.

28 ///

1 **5. Class Members or Settlement Class Members**

2 “Class Members” or “Settlement Class Members” means all persons who are employed or
3 have been employed as an hourly employee by BAKERSFIELD DODGE, INC., in the State of
4 California who worked one or more pay periods during the Class Period and who received a
5 paystub with an attached description of monies paid.

6 **6. Class Period**

7 “Class Period” means the period from November 18, 2019 to March 25, 2021.

8 **7. Class Representative**

9 “Class Representative” means Plaintiff DANIEL STEPHENSON.

10 **8. Class Representative Enhancement Award**

11 “Class Representative Enhancement Award” means the amount that the Court authorizes
12 to be paid to Plaintiff, in addition to Plaintiff’s Individual Settlement Payment, in recognition of
13 Plaintiff’s efforts and risks in assisting with the prosecution of the Lawsuit and in return for
14 executing a general release with Defendant.

15 **9. Complaint**

16 “Complaint” means the operative complaint, filed in the Action.

17 **10. Court**

18 “Court” means the Superior Court for the County of Kern, State of California.

19 **11. Defendant**

20 “Defendant” means Defendant BAKERSFIELD DODGE, INC.

21 **12. Effective Date**

22 “Effective Date” of the Settlement means the date on which the Court’s order granting
23 Final Approval of this Joint Stipulation becomes final. Such order becomes final upon the
24 following events: (i) upon the Court issuing the Final Approval Order granting approval of this
25 Settlement Agreement if no objections to the settlement are filed, or if an objection is filed but is
26 withdrawn prior to the Court’s Final Approval Hearing; or (ii) in the event there are written
27 objections filed prior to the final approval hearing which are not thereafter withdrawn prior to the
28 hearing, the later of the following events: (a) the day after the last day by which a notice of appeal

of the order may be timely filed with the California Court of Appeal, and none is filed; (b) if an appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further review of the Court of Appeal's decision passes and no further review is requested; (c) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court of Appeal's decision is requested, the day after the request for review is denied with prejudice and/or no further review of the order can be requested; or (d) if review is accepted, the day the Supreme Court of the State of California affirms the Settlement.

13. Final Approval Hearing

"Final Approval Hearing" means the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Settlement.

14. Final Approval Order

"Final Approval Order" means the proposed order granting final approval of the Parties' settlement, in a form substantially similar to the order attached hereto as Exhibit C.

15. Final Judgment

"Final Judgment" means a judgment issued by the Court approving this Agreement as binding upon the Parties. The Final Judgment shall constitute a judgment respecting the Parties within the meaning and for purposes of California Code of Civil Procedure sections 577, 581d, and 904.1(a), and on the PAGA claims for purposes of enforcing the rule announced in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

16. Individual Settlement Payment

"Individual Settlement Payment" means the amount paid from the Net Settlement Amount to a Participating Class Member, based upon his/her Number of Pay Periods Worked.

17. LWDA

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

18. Net Settlement Amount

"Net Settlement Amount" means the Gross Settlement Amount, less Court-approved Class Counsel Award, Class Representative Enhancement Award, payment to the LWDA, and

1 Settlement Administration Costs.

2 **19. Notice of Class Action Settlement**

3 “Notice of Class Action Settlement” means the Notice of Pendency of Class Action
4 Settlement and Hearing Date for Court Approval substantially in the form attached hereto as
5 Exhibit A, which shall include an approximation of each Settlement Class Member’s anticipated
6 Individual Settlement Payment. It is the notice approved by the Parties and subject to Court
7 approval explaining the terms of this Agreement and the settlement process, which the Settlement
8 Administrator will mail to each Settlement Class Member.

9 **20. Number of Pay Periods Worked**

10 “Number of Pay Periods Worked” means an estimate of the pay periods for which
11 Settlement Class Member(s) received a paystub with an attached description of monies paid from
12 Defendant in the State of California, excluding leaves of absence, or any gaps in employment,
13 during the Class Period based on Defendant’s records.

14 **21. PAGA**

15 “PAGA” refers to the Labor Code Private Attorneys General Act of 2004, codified at Labor
16 Code §§ 2699 et seq.

17 **22. PAGA Payment**

18 “PAGA Payment” means the payment made hereunder to the LWDA pursuant to PAGA.

19 **23. Participating Class Members**

20 “Participating Class Members” means those Class Members who did not file a valid and
21 timely Request for Exclusion pursuant to section III, paragraph 11 of this Agreement.

22 **24. Parties**

23 “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either
24 Plaintiff or Defendant, individually.

25 **25. Payment Ratio**

26 “Payment Ratio” means the respective Compensable Work Weeks during which an
27 employee worked, in proportion to the aggregate number of workweeks worked by all Settlement
28 Class members.

1 **26. Plaintiff**

2 “Plaintiff” means Plaintiff DANIEL STEPHENSON.

3 **27. Preliminary Approval Date**

4 “Preliminary Approval Date” means the date on which the Court issues an order granting
5 preliminary approval of the proposed in a form substantially similar to the order attached hereto
6 as Exhibit B.

7 **28. Released Claims**

8 “Released Claims” means any and all claims that are asserted in the operative complaint
9 and which could have been asserted based on the facts alleged in the complaint, for failure to issue
10 accurate itemized wage statements under Labor Code § 226(a), claims for penalties under the
11 Private Attorneys General Act of 2004 based on the underlying Labor Code § 226(a) allegations,
12 claims for restitution and other equitable relief, liquidated damages, punitive damages, or
13 penalties.

14 **29. Released Parties**

15 “Released Parties” means Defendant and any of its former and present parents,
16 subsidiaries, affiliates, officers, directors, employees, partners, shareholders, attorneys, agents,
17 successors, assigns, or legal representatives.

18 **30. Request for Exclusion**

19 “Request for Exclusion” means a letter setting forth a Class Member’s name, present
20 address, and a simple statement electing to be excluded from the Settlement.

21 **31. Response Deadline**

22 “Response Deadline” means the date sixty (60) days after the Settlement Administrator
23 mails the Notice of Class Action Settlement to Settlement Class members, which is the last date
24 on which Settlement Class members may: (a) submit a Request for Exclusion; (b) file and serve
25 objections to the settlement; or (c) dispute the information contained in the Notice of Class Action
26 Settlement.

27 **32. Settlement**

28 “Settlement” or “Settlement Agreement” means the disposition of the Lawsuit pursuant to

1 this Joint Stipulation of Class Action Settlement and Release of Claims.

2 **33. Settlement Administrator**

3 “Settlement Administrator” means the third-party company that the Parties have jointly
4 selected to be responsible for administering the Settlement. This Settlement Administrator is
5 ILYM Group, Inc.

6 **34. Settlement Administrator Costs**

7 “Settlement Administrator Costs” means the amount to be paid to the Settlement
8 Administrator from the Gross Settlement Amount for administration of this Settlement.

9 **35. Gross Settlement Amount**

10 “Gross Settlement Amount” means the agreed upon settlement amount totaling \$50,000.00
11 to be paid by Defendant in full settlement of the Released Claims, and includes without limitation
12 the Class Counsel Award, Class Representative Enhancement Award, Individual Settlement
13 Payments, PAGA Payment, and Settlement Administrator Costs.

14 **II. RECITALS**

15 **1. Class Certification.**

16 The Parties stipulate to class certification for purposes of settlement only. If the Court does
17 not grant either preliminary or final approval of this Settlement, the Parties agree that this
18 stipulation regarding class certification will be revoked and the Parties will return to a point in
19 litigation prior to the execution of this Agreement.

20 **2. Procedural History.**

21 On November 18, 2020, Plaintiff filed a Class Action Complaint and a notice with
22 California’s Labor and Workforce Development Agency (“LWDA”) regarding his intent to file an
23 action seeking civil penalties under PAGA. On February 18, 2021, Plaintiff filed a First Amended
24 Complaint (“FAC”), adding the PAGA claim based on the facts previously alleged in the
25 Complaint.

26 The operative Complaint alleges claims for: (1) Violation of Labor Code § 226(a); and (2)
27 Penalties Pursuant to Labor Code § 2699, *et seq.*

28 After the matter was at issue, the Parties began to engage in informal discovery to

1 understand the nature of the allegations and the scope of potential liability. Defendant provided
2 Plaintiff's counsel with pertinent data for the Class Members so that the Parties could fully-
3 investigate the claims at issue and understand their strengths and weaknesses.

4 Defendant denies any liability or wrongdoing of any kind associated with the claims
5 asserted in Plaintiff's Complaint, disputes the damages and penalties claimed by Plaintiff, and
6 further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate
7 for class or representative action treatment. This Stipulation is a compromise of disputed claims.
8 Nothing contained in this Stipulation, no documents referred to herein, and no action taken to carry
9 out this Stipulation, shall be construed or used as an admission by or against Defendant as to the
10 merits or lack thereof of the claims asserted in this Lawsuit. Defendant contends, among other
11 things, that, at all times, it has complied with all applicable state, federal and local laws related to
12 the Settlement Class members' employment.

13 The Class Representative is represented by Class Counsel. Class Counsel conducted an
14 investigation into the facts relevant to the Lawsuit, including reviewing documents and
15 information provided by Defendant. Based on their own independent investigation and evaluation,
16 Class Counsel is of the opinion that the Settlement with Defendant is fair, reasonable and adequate,
17 and in the best interest of the Settlement Class in light of all known facts and circumstances,
18 including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding a
19 class and representative action trial on the merits, and numerous potential appellate issues.
20 Although Defendant denies any liability, Defendant is agreeing to this Settlement solely to avoid
21 the cost of further litigation. Accordingly, the Parties and their counsel desire to fully, finally, and
22 forever settle, compromise and discharge all disputes and claims arising from or relating to the
23 Actions on the terms set forth herein.

24 **3. Benefits of Settlement to Class Members.**

25 Plaintiff and Class Counsel recognize the expense and length of continued proceedings
26 necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has
27 also taken into account the uncertainty and risk of the outcome of further litigation, and the
28 difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of

1 the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, both
2 generally and in response to Defendant's defenses thereto, and the difficulties in establishing
3 damages for the Settlement Class members. Plaintiff and Class Counsel have also taken into
4 account Defendant's agreement to enter into a settlement that confers substantial relief upon the
5 members of the Settlement Class. Based on the foregoing, Class Counsel have concluded that
6 settlement for the consideration and on the terms set forth in this Settlement Agreement, is fair,
7 reasonable, and adequate and is in the best interest of the putative class in light of all known facts
8 and circumstances, including the risk of significant delay, defenses asserted by Defendant,
9 Defendant's financial condition, numerous potential appellate issues, and other risks inherent in
10 litigation.

11 **4. Defendant's Reasons for Settlement.**

12 Defendant has concluded that any further defense of this litigation would be protracted and
13 expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have
14 been and, unless this Settlement is completed, will continue to be devoted to, the defense of the
15 claims asserted by Plaintiff and Settlement Class members. Defendant has also taken into account
16 the risks of further litigation in reaching its decision to enter into this Settlement. Even though
17 Defendant continues to contend that it is not liable for any of the claims set forth by Plaintiff in
18 this Lawsuit, Defendant has agreed, nonetheless, to settle in the manner and upon the terms set
19 forth in this Agreement to put to rest the claims in this Lawsuit. Defendant contends that it has
20 complied with all applicable state, federal, and local laws.

21 **5. Settlement of Disputed Claims.**

22 This Agreement is a compromise of disputed claims. Defendant has claimed and continues
23 to claim that the Released Claims have no merit and do not give rise to liability. Settlement Class
24 members have claimed and continue to claim that the Released Claims have merit and give rise to
25 liability on the part of Defendant. This Agreement is a compromise of disputed claims. Nothing
26 contained in this Agreement, no documents referred to herein, and no action taken to carry out this
27 Agreement, may be construed or used as an admission by or against the Settlement Class members
28 or Class Counsel as to the merits or lack thereof of the claims asserted in this Lawsuit.

1 **III. TERMS OF AGREEMENT**

2 **1. Release as To All Participating Class Members.**

3 As of the Effective Date, the Participating Class Members, including Plaintiff, release the
4 Released Parties from the Released Claims for the Class Period.

5 **2. Release of Claims by Plaintiff.**

6 As of the Effective Date, Plaintiff releases the Released Parties from all of the Released
7 Claims during the Class Period. Plaintiff, for himself and his heirs, successors and assigns, further
8 waives, releases, acquits and forever discharges the Released Parties from any and all claims,
9 actions, charges, complaints, grievances and causes of action, of whatever nature, whether known
10 or unknown, which exist or may exist on Plaintiff's behalf as of the date of this Agreement,
11 including, but not limited to, any and all tort claims, contract claims, wage claims, wrongful
12 termination claims, disability claims, benefit claims, public policy claims, retaliation claims,
13 statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims,
14 defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any
15 federal, state or other governmental statute, law, regulation or ordinance, including, but not limited
16 to, claims for violation of the FLSA, the California Labor Code, the Wage Orders of California's
17 Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities
18 Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income
19 Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and
20 Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's
21 Whistleblower Protection Act, California Business & Professions Code §§17200 et seq., and any
22 and all claims arising under any federal, state or other governmental statute, law, regulation or
23 ordinance.

24 Plaintiff's releases set forth herein include a waiver of all rights under California Civil
25 Code §1542, which provides:

26 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
27 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
28 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD
HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH

THE DEBTOR OR RELEASED PARTY.

Plaintiff may hereafter discover claims or facts in addition to, or different from, those which he now knows or believes to exist, but Plaintiff expressly agrees to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant.

3. Tax Liability and Medicare.

The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Settlement Class members are not relying on any statement or representation by the Parties in this regard. Participating Class Member' understand and agree that they will be responsible for the payment of taxes and penalties assessed on the payments described herein and will hold the Parties free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages, including the treatment of such payment as not subject to withholding or deduction for payroll and employment taxes. Moreover, this Agreement is based upon a good faith determination of the Parties to resolve a disputed claim. The Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Sec. 1395y(b), especially since this is strictly a wage and hour case. The Parties resolved this matter in compliance with both state and federal law. The Parties made every effort to adequately protect Medicare's interest and incorporate such into the settlement terms. Plaintiff warrants that he is not a Medicare beneficiary as of the date of this Agreement. Because Plaintiff is not a Medicare recipient as of the date of this Agreement, no conditional payments have been made by Medicare.

4. Circular 230 Disclaimer.

Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor

1 shall any such communication or disclosure constitute or be construed or be relied upon as, tax
2 advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10,
3 as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,
4 independent legal and tax counsel for advice (including tax advice) in connection with this
5 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other
6 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
7 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty
8 that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party
9 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax
10 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
11 acknowledging party of the tax treatment or tax structure of any transaction, including any
12 transaction contemplated by this Agreement.

13 **5. Preliminary Approval of Settlement.**

14 Plaintiff will move the Court to grant preliminary approval of this Settlement, certifying
15 the Settlement Class for settlement purposes only and setting a date for a final approval hearing.
16 All Parties agree to work diligently and cooperatively to have this Settlement presented to the
17 Court for preliminary approval. The proposed preliminary approval order shall provide for the
18 Notice of Class Action Settlement to be sent to Settlement Class members as specified herein.

19 **6. Settlement Administrator.**

20 Upon the Court granting preliminary approval of this Agreement, Defendant shall provide
21 the Settlement Administrator with the Class Information for purposes of mailing the Notice of
22 Class Action Settlement to the Settlement Class members. No later than three (3) days after receipt
23 of the Class Information, the Settlement Administrator shall notify counsel for the Parties that the
24 list has been received and state the number of Settlement Class members.

25 **7. Notice by First Class U.S. Mail.**

26 Upon receipt of the Class Information, the Settlement Administrator will perform a search
27 based on the National Change of Address Database to update and correct any known or identifiable
28 address changes. Within fifteen (15) days of preliminary approval of this Settlement, the

1 Settlement Administrator shall mail copies of the Notice of Class Action Settlement to all
2 Settlement Class members via regular First-Class U.S. Mail. The Settlement Administrator shall
3 exercise its best judgment to determine the current mailing address for each Settlement Class
4 Member, including performing a skip-trace to identify any updated addresses. The address
5 identified by the Settlement Administrator as the current mailing address shall be presumed to be
6 the best mailing address for each Settlement Class Member.

7 **8. Undeliverable Notices.**

8 Any Notice of Class Action Settlement returned to the Settlement Administrator as
9 undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding
10 address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall
11 promptly attempt to determine a correct address by use of skip-tracing, or other search using the
12 name, address and/or social security number of the Settlement Class Member whose notice was
13 undeliverable, and shall then re-mail all returned, undelivered mail within ten (10) days of
14 receiving notice that a notice was undeliverable. Settlement Class members who receive a re-
15 mailed Notice of Class Action Settlement shall have their Response Deadline extended twenty
16 (20) days from the original Response Deadline.

17 **9. Disputes Regarding Individual Settlement Payments.**

18 Settlement Class members will have the opportunity, should they disagree with
19 Defendant's records regarding the dates of employment stated on their Notice of Class Action
20 Settlement, to provide documentation and/or an explanation to show contrary information by the
21 Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties
22 to determine whether an adjustment is warranted. The Settlement Administrator shall determine
23 the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this
24 Agreement. The Settlement Administrator's determination of the eligibility for and amount of any
25 Individual Settlement Payment shall be binding upon the Settlement Class members and the
26 Parties. In the absence of circumstances indicating fraud, manipulation or destruction, Defendant's
27 records will be given a rebuttable presumption of accuracy.

28 ///

1 **10. Disputes Regarding Administration of Settlement.**

2 Any disputes not resolved by the Settlement Administrator concerning the administration
3 of the Settlement will be resolved by the Court, under the laws of the State of California. Prior to
4 any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the
5 disputes without the necessity of involving the Court.

6 **11. Exclusions.**

7 The Notice of Class Action Settlement shall state that Settlement Class members who wish
8 to exclude themselves from the Settlement must submit a Request for Exclusion by the Response
9 Deadline. The Request for Exclusion: (1) must contain the name, address, and telephone number
10 of the Settlement Class Member requesting exclusion; (2) must contain a statement expressing that
11 the Settlement Class Member elects to be excluded from the Settlement; (4) must be signed by the
12 Settlement Class Member; and (5) must be postmarked or fax stamped by the Response Deadline
13 and returned to the Settlement Administrator at the specified address or fax number. The Request
14 for Exclusion will be deemed invalid if it does not contain a Settlement Class Member's name,
15 address, telephone number, and signature. The date of the postmark on the return mailing envelope
16 or fax stamp on the Request for Exclusion shall be the exclusive means used to determine whether
17 a Request for Exclusion has been timely submitted. Any Settlement Class Member who requests
18 to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement
19 and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment
20 thereon. Settlement Class members who fail to submit a valid and timely Request for Exclusion
21 on or before the Response Deadline shall be bound by all terms of the Settlement and any Final
22 Judgment entered in this Lawsuit if the Settlement is approved by the Court. No later than seven
23 (7) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel
24 for the Parties with a complete list of all members of the Settlement Class who have timely
25 submitted a Request for Exclusion.

26 **12. Objections.**

27 The Notice of Class Action Settlement shall state that Settlement Class members who wish
28 to object to the Settlement may do so in person at the Final Approval Hearing and/or in writing.

Any written objection (“Notice of Objection”) must be mailed to the Settlement Administrator by the Response Deadline. The date of mailing on the envelope shall be deemed the exclusive means for determining that a Notice of Objection was timely received. The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the dates of employment of the Settlement Class Member; (3) the basis for the objection; and (4) if the Settlement Class Member intends to appear at the final approval hearing. Class Counsel will ensure that any Notice of Objection received by the Settlement Administrator by the Response Deadline are filed with the Court along with the Motion for Final Approval. Either of the Parties may file a responsive document to any objection before the Final Approval Hearing. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and counsel for Defendant no later than the Response Period Deadline. Class Counsel shall not represent any Settlement Class members with respect to any such objections.

Any Class Member who fails to submit a timely written objection or to present an objection in person at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

13. No Solicitation of Settlement Objections or Exclusions.

The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class members to submit either written objections to the Settlement or requests for exclusion from the Settlement, or to appeal from the Court’s Final Judgment.

14. Funding and Allocation of Gross Settlement Amount.

No later than twenty (20) days after the Effective Date, Defendant shall provide the Gross Settlement Amount to the Settlement Administrator to fund the Settlement, as set forth in this Agreement. Defendant will not be obligated to make any payments contemplated by this Agreement unless and until the Court enters the Final Approval Order and Final Judgment, and after the Effective Date of the Agreement.

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1 **15. Net Settlement Amount.**

2 The Net Settlement Amount will be determined by the Settlement Administrator by
3 subtracting the Class Counsel Award, Class Representative Enhancement Award, PAGA Payment,
4 and Settlement Administrator Costs from the Gross Settlement Amount. The anticipated Net
5 Settlement Amount is \$16,333.34. The Parties estimate the amount of the Net Settlement Amount
6 as follows:

7			
8	Gross Settlement Amount:	\$	\$50,000.00
9	Class Representative Enhancement Award:	\$	\$5,000
10			
11	Class Counsel Fees:	\$	\$16,666.67
12	Class Counsel Costs:	\$	\$3,000
13	PAGA Payment	\$	\$4,000
14			<i>(\$3,000 to the LWDA and \$1,000 to</i>
15			<i>remain in the Net Settlement Amount)</i>
16	Settlement Administrator Costs:	\$	\$5,000
17	Net Settlement Amount	\$	\$17,333.34

18 This is a non-reversionary Settlement in which Defendant is required to pay the entire
19 Gross Settlement Amount, which includes, the Class Counsel Award, Class Representative
20 Enhancement Award, Individual Settlement Payments, PAGA Payment, and Settlement
21 Administrator Costs. No portion of the Gross Settlement Amount will revert to Defendant.
22 Defendant's share of payroll taxes and other required withholdings from Individual Settlement
23 Payments, including but not limited to Defendant's FICA and FUTA contributions, shall be paid
24 separately from, and in addition to, the Gross Settlement Amount.

25 **16. Individual Settlement Payments.**

26 Individual Settlement Payments will be paid from the Net Settlement Amount and shall be
27 paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be
28 mailed by regular First-Class U.S. Mail to each Participating Class Member's last known mailing

address within seven calendar days after Defendant makes the final settlement payment. All Individual Settlement Payments will be allocated as follows: thirty-three and one-third percent (33.33%) as wages, thirty-three and one-third percent (33.33%) as interest, and thirty-three and one-third percent (33.33%) as statutory penalties.

17. Class Member's Payment Ratio.

Participating Class Members will be paid on a pro-rata basis. A Participating Class Member's Individual Settlement Payment will be based on the number of Compensable Workweeks during which s/he worked in proportion to the aggregate number of workweeks worked by all Settlement Class members.

18. Payment to Class Member.

Checks shall be made payable to each Participating Class Member for payment of each Participating Class Member's Individual Settlement Payment as set forth in section III, paragraph 16 of this Agreement.

19. Form of Payment to Class Member.

The Individual Settlement Payment amount due to each Participating Class Member shall be paid in the form of a check to each Participating Class Member.

20. Unclaimed Settlement Payment(s).

After one hundred and sixty (160) days of the mailing of the Individual Settlement Payment checks, funds attributable to unclaimed, undeliverable, or expired Individual Settlement Payment checks will be distributed to a non-profit mutually selected by Plaintiff and Defendant.

21. Class Representative Enhancement Award.

Plaintiff will request that the Court approve a Class Representative Enhancement Award of up to \$5,000. The Class Representative Enhancement Award shall be paid to Plaintiff from the Gross Settlement Amount within ten (10) calendar days after Defendant makes the final settlement payment. The Settlement Administrator shall issue an IRS Form 1099 – MISC to Plaintiff for his respective Class Representative Enhancement Award. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his Class Representative Enhancement Award and shall hold harmless Defendant and Class Counsel from any claim or liability for taxes,

penalties, or interest arising as a result of the Class Representative Enhancement Award. The Class Representative Enhancement Award shall be in addition to the Plaintiff's Individual Settlement Payment as a Settlement Class Member. Any amount requested by Plaintiff for the Class Representative Enhancement Award and not granted by the Court shall return to the Net Settlement Amount and be distributed to Participating Class Members as provided in this Agreement.

22. Class Counsel Award.

Class Counsel will request that the Court approve attorneys' fees in the amount of up to thirty-three and one-third percent (33.33%) (\$16,666.67) of the Gross Settlement Amount (\$16,666.67). Class Counsel will request that the Court approve the reimbursement of any litigation costs or expenses associated with Class Counsel's prosecution of this matter from the Gross Settlement Amount not to exceed \$3,000. So long as there are no objections, Class Counsel shall be paid any Court-approved fees and costs no later than ten (10) calendar days after Defendant makes the final settlement payment. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph. This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees and costs. Any amount requested by Class Counsel for the Class Counsel Award and not granted by the Court shall return to the Net Settlement Amount and be distributed to Participating Class Members as provided in this Agreement.

23. Settlement Administrator Costs.

The Parties agree to allocate up to \$5,000 of the Gross Settlement Amount for Settlement Administrator Costs. The Settlement Administrator shall have the authority and obligation to make payments, credits and disbursements to Settlement Class members in the manner set forth herein, calculated in accordance with the methodology set out in this Agreement and orders of the Court. The Parties agree to cooperate in the Settlement administration process and to make all reasonable efforts to control and minimize the cost and expenses incurred in administration of the Settlement.

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1 **24. Responsibilities of the Settlement Administrator.**

2 The Settlement Administrator shall be responsible for the following: processing and
3 mailing payments to Plaintiff, Class Counsel, and Participating Class Members; printing, and
4 mailing the Notice of Class Action Settlement and tax forms to the Participating Class Members
5 as directed by the Court; receiving and reporting the requests for exclusion and objections
6 submitted by Settlement Class members; providing declaration(s) as necessary in support of
7 preliminary and/or final approval of this Settlement; and other tasks as the Parties mutually agree
8 or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall
9 keep the Parties timely apprised of the performance of all Settlement Administrator
10 responsibilities.

11 **25. Settlement Administrator Fees.**

12 The Settlement Administrator shall be paid the Settlement Administrator Costs within ten
13 (10) calendar days after Defendant makes the final settlement payment.

14 **26. Payment to the LWDA.**

15 A total payment of \$4,000 from the Gross Settlement Amount will be allocated as the
16 PAGA Payment to be paid as penalties under the Labor Code Private Attorneys General Act of
17 2004, to the LWDA. Seventy-five percent (75%) of the PAGA Payment will be paid to the LWDA
18 (\$3,000) and the remaining twenty-five (25%) shall be included in the Net Settlement Amount
19 (\$1,000) and distributed to putative class members.

20 **27. Final Approval Hearing and Entry of Final Judgment.**

21 Upon expiration of the Response Deadline, with the Court's permission, a final approval
22 hearing shall be conducted to determine final approval of the Settlement along with the amount
23 properly payable for: (i) the Class Counsel Award; (ii) the Class Representative Enhancement
24 Award; (iii) Individual Settlement Payments; (iv) the Settlement Administrator Costs; and (v)
25 PAGA Payment.

26 **28. Final Approval Order.**

27 Plaintiff will request, and Defendant will concur in said request, that the Court enter, after
28 the Final Approval Hearing, a Final Approval Order in the form attached hereto as Exhibit B.

1 Plaintiff will request that the Final Approval Order certify the Settlement Class; find that this
2 Agreement is fair, just, adequate, and in the best interests of the Class; and require the Parties to
3 carry out the provisions of this Agreement.

4 **29. Nullification of Settlement Agreement.**

5 In the event: (i) the Court denies preliminary approval of the Settlement; (ii) the Court
6 denies final approval of the Settlement; (iii) the Court refuses to enter a Final Judgement as
7 provided herein; or (iv) the Settlement does not become final for any other reason, this Settlement
8 Agreement shall be null and void and any order or judgement entered by the Court in furtherance
9 of this Settlement shall be treated as void from the beginning. To the extent the total number of
10 opt outs exceed 10%, Defendant has the option to nullify this settlement within ten (10) court days
11 of the last day of the response period via a written notice to Plaintiff's counsel. If one or more of
12 such events occur causing the Settlement Agreement to become null and void, the Parties shall
13 proceed in all respects as if this Agreement had not been executed, except that any fees already
14 incurred by the Settlement Administrator shall be paid by the party terminating the Settlement or
15 Defendant will be solely responsible for the costs incurred for the settlement administration should
16 it exercise its' option to nullify this agreement. The return of any paid Settlement funds to
17 Defendant shall occur no later than five (5) business days after one or more of the triggering events
18 leading to nullification occurs. In the event an appeal is filed from the Court's Final Judgment, or
19 any other appellate review is sought, administration of the Settlement shall be stayed pending final
20 resolution of the appeal or other appellate review, but any fees incurred by the Settlement
21 Administrator prior to it being notified of the filing of an appeal from the Court's Final Judgment,
22 or any other appellate review, shall be paid to the Settlement Administrator by Defendant within
23 thirty (30) days of said notification.

24 **30. Increase in Class Members.**

25 It was represented to Class Counsel that the Settlement Class is estimated to be 2,018 pay
26 periods at issue. Upon receipt of the Class Data, the Settlement Administrator shall confirm to
27 Plaintiff that the Class Data is consistent with these representations. To the extent the number of
28 pay periods in the Class Data increases beyond 2,018 by more than 7%, Defendant shall have the

option to increase the Gross Settlement Amount by a proportionate amount. For example, if the number of pay periods increases by 8%, Defendant shall increase the Gross Settlement Amount by 8%. If the increase causes an increase of the cost of Settlement Administration beyond the amount that has been approved by the Court, Defendant shall separately bear the increased cost of Settlement Administration outside of the Gross Settlement Amount. If Defendant fails to increase the Gross Settlement Amount proportionately or remit payment of the increased cost of Settlement Administration, Plaintiff shall have the right to terminate this Agreement and the Parties will be restored to their positions prior to the Settlement and the Settlement shall be null and void.

31. No Effect on Employee Benefits.

Amounts paid to Plaintiff or other Settlement Class members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of Plaintiff or Settlement Class members.

32. No Admission by Defendant.

Defendant denies any and all claims alleged in this Lawsuit and deny all wrongdoing whatsoever. This Agreement is not a concession or admission and shall not be used against Defendant as an admission or indication with respect to any claim of any fault, concession, or omission by Defendant.

33. Exhibits and Headings.

The terms of this Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

34. Interim Stay of Proceedings.

Upon full execution of this Agreement, the Parties agree that based upon Code of Civil Procedure §583.310 ("the 5-year rule"), the Lawsuit shall be stayed in its entirety except for the proceedings necessary to implement and complete the Settlement.

1 **35. Amendment or Modification.**

2 This Agreement may be amended or modified only by a written instrument signed by
3 counsel for all Parties or their successors-in-interest.

4 **36. Entire Agreement.**

5 Apart from the fully executed Memorandum of Understanding, which the Parties
6 specifically agree to integrate herein, this Agreement and any attached Exhibits constitute the
7 entire Agreement among these Parties, and no oral or written representations, warranties, or
8 inducements have been made to any Party concerning this Agreement or its Exhibits other than
9 the representations, warranties, and covenants contained and memorialized in the Agreement and
10 its Exhibits. The Parties are entering into this Agreement based solely on the representations and
11 warranties herein and not based on any promises, representation, and/or warranties not found
12 herein.

13 **37. Authorization to Enter into Settlement Agreement.**

14 Counsel for all Parties warrant and represent they are expressly authorized by the Parties
15 whom they represent to negotiate this Agreement and to take all appropriate actions required or
16 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
17 execute any other documents required to effectuate the terms of this Agreement. The Parties and
18 their counsel will cooperate with each other and use their best efforts to affect the implementation
19 of the Settlement. In the event the Parties are unable to reach agreement on the form or content of
20 any document needed to implement the Settlement, or on any supplemental provisions that may
21 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
22 the Court to resolve such disagreement. The persons signing this Agreement on behalf of
23 Defendant represent and warrant that they are authorized to sign this Agreement on behalf of
24 Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that
25 he does have not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

26 **38. Binding on Successors and Assigns.**

27 This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns
28 of the Parties hereto, as previously defined.

1 **39. California Law Governs.**

2 All terms of this Agreement and the Exhibit hereto shall be governed by and interpreted
3 according to the laws of the State of California.

4 **40. Counterparts.**

5 This Agreement may be executed in one or more counterparts. All executed counterparts
6 and each of them shall be deemed to be one and the same instrument.

7 **41. Jurisdiction of the Court.**

8 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
9 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this
10 Agreement and all orders and judgments entered in connection therewith, and the Parties and their
11 counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing,
12 and enforcing the settlement embodied in this Agreement and all orders and judgments entered in
13 connection therewith. All terms of this Agreement are subject to approval by the Court.

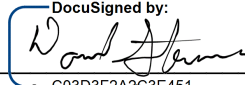
14 **42. Invalidity of Any Provision.**

15 Before declaring any provision of this Agreement invalid, the Court shall first attempt to
16 construe the provisions valid to the fullest extent possible consistent with applicable precedents so
17 as to define all provisions of this Agreement valid and enforceable.

18 **WHEREFORE**, Plaintiff, on behalf of himself and the Settlement Class members, and
19 Defendant has executed this Agreement as of the dates set forth below.

20 **IT IS SO AGREED:**

21
22 Dated: February 2, 2022

DocuSigned by:
By: 
DANIEL STEPHENSON
CB9B9F2A203E451

23
24
25 Dated: _____

By: _____
BAKERSFIELD DODGE, INC.

1 **39. California Law Governs.**

2 All terms of this Agreement and the Exhibit hereto shall be governed by and interpreted
3 according to the laws of the State of California.

4 **40. Counterparts.**

5 This Agreement may be executed in one or more counterparts. All executed counterparts
6 and each of them shall be deemed to be one and the same instrument.

7 **41. Jurisdiction of the Court.**

8 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
9 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this
10 Agreement and all orders and judgments entered in connection therewith, and the Parties and their
11 counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing,
12 and enforcing the settlement embodied in this Agreement and all orders and judgments entered in
13 connection therewith. All terms of this Agreement are subject to approval by the Court.

14 **42. Invalidity of Any Provision.**

15 Before declaring any provision of this Agreement invalid, the Court shall first attempt to
16 construe the provisions valid to the fullest extent possible consistent with applicable precedents so
17 as to define all provisions of this Agreement valid and enforceable.

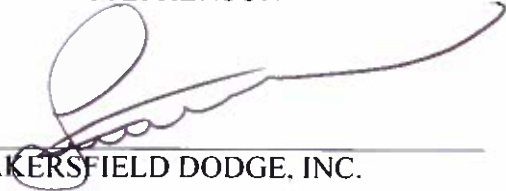
18 **WHEREFORE**, Plaintiff, on behalf of himself and the Settlement Class members, and
19 Defendant has executed this Agreement as of the dates set forth below.

20 **IT IS SO AGREED:**

21
22 Dated: _____

By: _____
DANIEL STEPHENSON

23
24
25 Dated: 2.7.22

By: 
BAKERSFIELD DODGE, INC.

APPROVED AS TO FORM AND CONTENT:

Dated: February 2, 2022

KINGSLEY & KINGSLEY APC

By: _____

Eric B. Kingsley

Kelsey M. Szamet

Attorneys for Plaintiff DANIEL STEPHENSON
and the Proposed Class

Dated: _____

DAVTYAN LAW FIRM, INC.

By: _____

Emil Davtyan

Attorneys for Plaintiff DANIEL STEPHENSON
and the Proposed Class

Dated: _____

LEBEAU THELEN LLP

By: _____

Daniel K. Klingenberger

Matthew M. Brady

Attorneys for Defendant BAKERSFIELD
DODGE, INC.

1 **APPROVED AS TO FORM AND CONTENT:**

2 Dated: _____

KINGSLEY & KINGSLEY APC

4 By: _____

Eric B. Kingsley

Kelsey M. Szamet

Attorneys for Plaintiff DANIEL STEPHENSON
and the Proposed Class

8 Dated: _____

DAVTYAN LAW FIRM, INC.

9 By: _____

Emil Davtyan

Attorneys for Plaintiff DANIEL STEPHENSON
and the Proposed Class

12 Dated: 2/7/22

LEBEAU THELEN LLP

14 By: 

Daniel K. Klingenger

Matthew M. Brady

Attorneys for Defendant BAKERSFIELD
DODGE, INC.

EXHIBIT “A”

[CLASS MEMBER NAME]

DANIEL STEPHENSON v. BAKERSFIELD DODGE, INC.

Superior Court of the State of California, County of Kern
Case No.: BCV-20-102693

If you are a current or former employee for BAKERSFIELD DODGE, INC. (“BAKERSFIELD DODGE” or “Defendant”), a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT
INFORMATION ABOUT YOUR RIGHTS.

- This lawsuit involves a class defined as: “all persons who are employed or have been employed as an hourly employee by BAKERSFIELD DODGE, INC., in the State of California who worked one or more pay periods during the Class Period and who received a paystub with an attached description of monies paid.”
- You are receiving this Notice because the records reflect that you may be one of the above Class Members.
- Plaintiff in this class action alleges that Defendant failed to provide accurate itemized wage statements and is liable for penalties under California’s Private Attorneys General Act or “PAGA.” BAKERSFIELD DODGE denies Plaintiff’s claims and asserts that it has complied with all of its legal obligations to its employees.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff’s claims or ’s defenses.
- You will not be penalized or retaliated against by BAKERSFIELD DODGE for participating in this class action settlement. If you are currently employed by BAKERSFIELD DODGE, your employment will not be affected in any way. Current employees of BAKERSFIELD DODGE who choose to participate in the settlement will not be required to resign and can continue to work for BAKERSFIELD DODGE.
- You have several options available to you:

DO NOTHING	By doing nothing, you <u>will</u> receive a share of the settlement proceeds, and you will give up any rights to sue BAKERSFIELD DODGE for Defendant’s alleged failure to provide accurate itemized wage statements during the Class Period.
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ASK TO BE EXCLUDED (OPT OUT)	Exclude yourself from this lawsuit. Keep your rights to file a separate claim against BAKERSFIELD DODGE for Defendant's alleged failure to provide accurate itemized wage statements during the Class Period. If you ask to be excluded, you <u>will not</u> receive a share of the settlement proceeds, but you keep any rights you may have to bring your own suit against BAKERSFIELD DODGE for the same legal claims in this lawsuit.
OBJECT	Object to the terms of this Settlement.

**Your options are explained in this notice.
To opt out or object, you must act by **XXXX**.**

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of BAKERSFIELD DODGE's employees. You have received this notice because BAKERSFIELD DODGE's records indicate that you are a member of this class.

2. What is this lawsuit about?

This lawsuit was filed on November 18, 2020, on behalf of all persons who are employed or have been employed as an hourly employee by BAKERSFIELD DODGE in the State of California. The operative complaint alleges class-wide causes of action against BAKERSFIELD DODGE for failure to provide accurate itemized wage statements pursuant to Labor Code § 226(a) and penalties under the Labor Code Private Attorneys General Act, Labor Code § 2699 et seq.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Defendant's defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of the class members to whom it applies given the outcome of their investigation, the consumption of time and resources required in connection with further litigation, and the uncertainty in the law governing some of the claims presented. Although Defendant disputes Plaintiff's claims and asserts that it has complied with all of its legal obligations toward its employees, Defendant has also concluded that further litigation would be protracted and expensive and would also divert management and employee time.

5. What are the terms of the settlement and how much will I receive?

The Gross Settlement Amount is \$50,000.00. Under the proposed settlement, the following

amounts will be deducted before any payments are made to employees, subject to final approval by the Court:

- Attorneys' fees: \$16,666.67
- Litigation Costs: \$3,000
- Claims Administration Costs: \$5,000
- Class Representative Enhancement Award to Class Representative: \$5,000
- Penalties to the Labor & Workforce Development Agency: \$4,000 (*\$3,000 to the LWDA and \$1,000 to remain in the Net Settlement Amount*)

After these deductions, \$ XX17,333.34 will be available for payment to the Settlement Class Members receiving this notice ("Net Settlement Amount").

Each Participating Class Member's Individual Settlement Payments shall be determined on a pro rata basis based upon the number of workweeks during which the employee worked in proportion to the aggregate number of workweeks by all Settlement Class members.

All Individual Settlement Payments will be allocated as follows: 1/3 (33%) to settlement of wage claims, 1/3 (33%) to settlement of claims for interest, and 1/3 (33%) to settlement of claims for statutory penalties.

According to BAKERSFIELD DODGE's records, the total number of pay periods that you worked as an employee *during the relevant time period* is _____. If you disagree with this information and would like someone to look into the matter, please follow the procedure below. Based on these pay periods, your estimated settlement amount is _____.

6. What if I disagree with the number of pay periods shown above?

If you believe the information in the notice is incorrect regarding the number of pay periods, you will need to write a letter setting forth the number of pay periods that you believe are correct. You may attach any relevant documentation in support thereof. You must mail your letter to:

Settlement Administrator
c/o ILYM Group, Inc.

You must submit such information by **XXXX**. Class Counsel and the Settlement Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute under this Section, the Settlement Administrator shall review all information, material and documents and make a decision regarding the dispute.

7. What do I have to do to receive a share of the settlement?

If you wish to receive an award under the terms of this settlement, you do not have to do anything. However, it is advisable to confirm your current mailing address with the Settlement Administrator in order to ensure you receive your settlement share. You will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

The claims you will Release by doing nothing are: all claims asserted in Plaintiff's First Amended Complaint. The members of the Settlement Class will release and discharge Defendant, and any of its former and present parents, subsidiaries, and affiliates, and its officers, directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns, or legal representatives, from any and all claims that were/are asserted in the operative complaint and which could have been asserted based on the facts alleged in the complaint, and which were asserted leading up to and during mediation, including without limitation to, any and all claims for failure to provide accurate itemized wage statements under Labor Code § 226(a), claims for penalties under the Private Attorney General Act, claims for restitution and other equitable relief, liquidated damages, punitive damages, or penalties in their positions as Settlement Class Members.

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself ("opt out") by completing, signing, and mailing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, ILYM Group, Inc., by XXXX.

Settlement Administrator
c/o ILYM Group, Inc.

If your Request for Exclusion is postmarked after XXXX, it will be rejected, and you will be a Participating Class Member and be bound by the settlement terms and release. Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Participating Class Member and will not receive any payment as part of this settlement. Such persons will keep any rights to sue BAKERSFIELD DODGE separately about the claims made in this lawsuit.

10. What if I have an objection?

A class member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator no later than XXXX.

Any class member may make an objection at the Final Approval Hearing with or without filing or serving any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval hearing to present his or her objection directly to the Court. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Judge and serve Class Counsel and Defense Counsel no later than _____. The Final Approval and Fairness Hearing will be held in Dept. 17 of the Kern County Superior Court, located at 1415 Truxtun Avenue, Bakersfield, CA 93301 on _____, 2021, at XX (a.m./p.m.) (Pacific Time).

Class Counsel:	Counsel for BAKERSFIELD DODGE:
Kingsley & Kingsley, APC Kelsey M. Szamet, Esq. 16133 Ventura Blvd., Suite 1200 Encino, CA 91436 Telephone: (818) 990-8300	LeBeau Thelen LLP Daniel K. Klingenberg, Esq. Matthew M. Brady, Esq. 5001 E. Commercenter Drive, Suite 300 P.O. Box 12092 Bakersfield, CA 93389-2092 Tel: (661) 325-8962

Davtyan Law Firm, Inc. Emil Davtyan, Esq. 880 E. Broadway Glendale, CA 91205 Telephone: (818) 875-2008	
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11. Do I need a lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Dept. 17 of the Kern County Superior Court, located at 1415 Truxtun Avenue, Bakersfield, CA 93301 on _____, 2021, at XX (a.m./p.m.) (Pacific Time), to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's Enhancement Awards, and the costs of claims administration. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

13. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may also telephone the BAKERSFIELD DODGE Settlement Administrator, ILYM Group, Inc. (listed above), or Class Counsel (listed above).

Please do not telephone the Court, the Office of the Clerk, or BAKERSFIELD DODGE's counsel for information regarding this settlement.

EXHIBIT “B”

KINGSLEY & KINGSLEY, APC

ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

DAVTYAN LAW FIRM, INC.

EMIL DAVTYAN, Esq. (SBN 299363)
emil@davtyanlaw.com
880 E. Broadway
Glendale, CA 91205
Tel: (818) 875-2008, Fax: (818) 722-3974

Attorneys for Plaintiff and the Proposed Class

LeBeau Thelen LLP

Daniel K. Klingenger (SBN 131134)
dklingenger@lebeauthelen.com
Matthew M. Brady (SBN 137765)
mbrady@lebeauthelen.com
5001 E. Commercenter Drive, Suite 300
P.O. Box 12092
Bakersfield, CA 93389-2092
Tel: (661) 325-8962; Fax: (661) 325-1127

Attorneys for Defendant Bakersfield Dodge, Inc.

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

DANIEL STEPHENSON an individual, on
behalf of himself and others similarly situated

PLAINTIFF,

v.

BAKERSFIELD DODGE, INC.; and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO. BCV-20-102693

[Case Assigned for All Purposes to Hon. Judge
Thomas S. Clark in Dept. 17]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: XX

Time: XX

Dept.: 17

Complaint Filed: November 18, 2020

FAC Filed: February 18, 2021

Trial Date: None Set

1 The Motion for Preliminary Approval of the Joint Stipulation of Class Action Settlement
2 and Release of Claims (“Settlement Agreement”), a copy of which is attached as to Plaintiff’s
3 Motion for Preliminary Approval of Class Action Settlement as Exhibit “1”, came before this
4 Court on XXXX. The Court, having considered the papers submitted in support of the motion of
5 the parties, **HEREBY ORDERS THE FOLLOWING:**

6 1. The Court grants preliminary approval of the Settlement Agreement and the
7 Settlement Class based upon the terms set forth in the Settlement Agreement filed herewith. The
8 Settlement is fair, adequate, and reasonable to the Class. The Court finds that: (a) the Agreement
9 resulted from extensive arm’s length negotiations; and (b) the Agreement is sufficient to warrant
10 notice of the Settlement to persons in the Settlement Class and a full hearing on the final approval
11 of the Settlement.

12 2. Settlement “Class Member(s)” means “all persons who are employed or have been
13 employed as an hourly employee by BAKERSFIELD DODGE, INC., in the State of California
14 who worked one or more pay periods during the Class Period and who received a paystub with an
15 attached description of monies paid.”

16 3. The Settlement falls within the range of reasonableness and appears to be
17 presumptively valid, subject only to any objections that may be raised at the final fairness hearing
18 and final approval by this Court.

19 4. The Court makes the following preliminary findings for settlement purposes
20 only:

- 21 A. The Settlement Class, which consists of approximately 98 persons, is so
22 numerous that joinder of all members is impracticable;
- 23 B. There appear to be questions of law or fact common to the Settlement
24 Class for purposes of determining whether this Settlement should be
25 approved;
- 26 C. Plaintiff’s claims appear to be typical of the claims being resolved through
27 the proposed settlement;
- 28 D. Plaintiff appears to be capable of fairly and adequately protecting the
interests of the Settlement Class Members in connection with the proposed
settlement;
- E. Common questions of law and fact appear to predominate over questions
affecting only individual persons in the Settlement Class. Accordingly,

the Settlement Class appears to be sufficiently cohesive to warrant settlement by representation; and

F. Certification of the Settlement Class appears to be superior to other available methods for the fair and efficient resolution of the claims of the Settlement Class.

5. The Court approves, as to form and content, the Class Notice to Class Members in substantially the form attached to the Settlement Agreement as Exhibit A.

6. The Court approves the procedure for Class Members to object to the Settlement as set forth in the Class Notice to Class Members.

7. The Court approves the procedure for Class Members to become Participating Class Members as set forth in the Claims Form to Class Members.

8. The Court directs the mailing of the Class Notice to Class Members by first class mail to the Class Members in accordance with the Implementation Schedule set forth below. The Court finds that the dates selected for the mailing and distribution of the Notice, as set forth in the Implementation Schedule, meet the requirements of due process and provide the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

9. The Court confirms Eric B. Kingsley and Kelsey M. Szamet of Kingsley & Kingsley, APC and Davtyan Law Firm, Inc. as Class Counsel.

10. The Court confirms DANIEL STEPHENSON as the Class Representative.

11. The Court approves ILYM Group, Inc. as the Settlement Administrator.

12. The Court orders that pursuant to the California Private Attorneys General Act, Labor Code §§ 2698, et seq. ("PAGA"), statutory notice of this Settlement has been and will continue to be given to the Labor & Workforce Development Agency.

13. The Court orders the following Implementation Schedule for further proceedings:

a.	Preliminary Approval	XXXX
b.	Deadline for Defendant to Provide Class Data to Settlement Administrator	10 business days from Preliminary Approval

c.	Mail Notice to Class Members	15 calendar days from Settlement Administrator's receipt of Class Data
d.	Deadline for Class Members to Postmark Request for Exclusion	60 calendar days from mailing of Notice Packet (judged by postmark date)
e.	Deadline for Class Members to Postmark Any Objection	60 calendar days from mailing of Notice Packet (judged by postmark date)
f.	Deadline for Class Counsel to file Motion for Final Approval of Class Settlement	To be determined by the Court _____
g.	Deadline for Class Counsel to file Motion for Class Counsel Award	To be determined by the Court _____
h.	Final Approval Hearing	To be determined by the Court _____

15. IT IS FURTHER ORDERED that if the Court does not execute and file an Order of Final Approval and Judgment, or if the Effective Date of Settlement, as defined in the Settlement Agreement, does not occur for any reason, the Settlement Agreement and the proposed Settlement that is the subject of this Order shall become null, void, unenforceable and inadmissible in any judicial, administrative or arbitral proceeding for any purpose, and all evidence, court orders and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement Agreement.

16. IT IS FURTHER ORDERED that, pending further Order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are hereby stayed.

17. The Court expressly reserves the right to adjourn or continue the Final Fairness Hearing from time to time without further notice to members of the Settlement Class.

DATED: _____

JUDGE OF THE SUPERIOR COURT

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EXHIBIT “C”

KINGSLEY & KINGSLEY, APC

ERIC B. KINGSLEY, Esq. (SBN 185123)

eric@kingsleykingsley.com

KELSEY M. SZAMET, Esq. (SBN 260264)

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DAVTYAN LAW FIRM, INC.

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880 E. Broadway

Glendale, CA 91205

Tel: (818) 875-2008, Fax: (818) 722-3974

Attorneys for Plaintiff and the Proposed Class

LeBeau Thelen LLP

Daniel K. Klingenger (SBN 131134)

dklingenger@lebeauthelen.com

Matthew M. Brady (SBN 137765)

mbrady@lebeauthelen.com

5001 E. Commercenter Drive, Suite 300

P.O. Box 12092

Bakersfield, CA 93389-2092

Tel: (661) 325-8962; Fax: (661) 325-1127

Attorneys for Defendant Bakersfield Dodge, Inc.

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

DANIEL STEPHENSON, an individual, on
behalf of the State of California, as a private
attorney general,

PLAINTIFF,

v.

BAKERSFIELD DODGE, INC.; and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO. BCV-20-102693

[Case Assigned for All Purposes to Hon. Judge
Thomas S. Clark in Dept. 17]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTERING
JUDGMENT**

Date: XX

Time: XX

Dept.: 17

Complaint Filed: November 18, 2020

FAC Filed: February 18, 2021

Trial Date: None Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 The above captioned Action is a class action lawsuit brought by Plaintiff DANIEL
3 STEPHENSON (“Plaintiff”) against Defendant BAKERSFIELD DODGE, INC. (“Defendant”).
4 The Motion for Final Approval of Class Action Settlement came before this Court on XXXX.

5 **WHEREAS**, Judge Thomas S. Clark granted preliminary approval of the Joint Stipulation
6 of Class Action Settlement and Release of Claims (“Settlement Agreement”), attached to the
7 concurrently filed Declaration of Kelsey M. Szamet as Exhibit “1”, on XX.

8 **WHEREAS**, Plaintiff DANIEL STEPHENSON has applied to the Court for an order
9 granting final approval of the Settlement Agreement.

10 **WHEREAS**, the Settlement Agreement sets forth the terms and conditions of the proposed
11 Settlement and for entry of an order of final approval and entry of final judgment thereon. The
12 Court having read and considered Plaintiff’s Motion for Final Approval of Class Action
13 Settlement; Motion for Approval of Approval of Attorneys’ Fees and Costs; the Declarations of
14 Kelsey M. Szamet, Daniel Stephenson, and XXXX of ILYM Group, Inc.; and the supporting
15 documents annexed thereto, now finds:

16 **NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED:**

17 1. The Court has personal jurisdiction over all Settlement Class Members and that the
18 Court has subject matter jurisdiction to approve the Settlement;

19 2. The terms of the Settlement are fair, just, reasonable, and adequate, consistent and
20 in compliance with California Code of Civil Procedure, the California and United States
21 Constitutions (including the due process clauses), the California Rules of Court and any other
22 applicable law, and in the best interest of each of the Parties and the Class members and is hereby
23 finally approved in all respects.

24 3. The Parties are hereby directed to perform the terms of the Settlement as described
25 in the Settlement Agreement according to its terms and provisions.

26 4. The Settlement Agreement is binding on Plaintiff and all other Settlement Class
27 Members, except those timely and properly filed Requests for Exclusions, as well as their heirs,
28 executors, and administrators, successors, and assigns.

1 5. There are XX (XX) valid requests for exclusion.

2 6. It is ordered that the Settlement Class is certified for settlement purposes only. The
3 Court finds that an ascertainable class exists and a well-defined community of interest exists in the
4 questions of law and fact involved because in the context of the Settlement: (i) there are questions
5 of law and fact common to the Class Members which, as to the Settlement and all related matters,
6 predominate over any individual questions; (ii) the Claims of Plaintiff are typical of the Claims of
7 the Class members; and (iii) in negotiating, entering into and implementing the Settlement,
8 Plaintiff and Plaintiff's Attorneys have fairly and adequately represented and protected the interest
9 of the Class Members.

10 7. The Court finds that the Notice and notice methodology implemented pursuant to
11 this Settlement (i) constituted the best practicable notice; (ii) constituted notice that was reasonably
12 calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the
13 Action, their right to object to or exclude themselves from the proposed Settlement and their right
14 to appear at the Final Settlement Hearing; (iii) were reasonable and constituted due, adequate and
15 sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements
16 of the California Code of Civil Procedure, the California and United States Constitution (including
17 the Due Process Clause), the California Rules of Court and any other applicable law.

18 8. The Settlement Class is hereby made final. The Settlement Class is defined as: "all
19 persons who are employed or have been employed as an hourly employee by BAKERSFIELD
20 DODGE, INC., in the State of California who worked one or more pay periods during the Class
21 Period and who received a paystub with an attached description of monies paid."

22 9. The "Covered Period" or "Class Period" is November 18, 2019 to March 25, 2021.

23 10. The Settlement Agreement is not an admission by Defendant, nor is this Final Order
24 a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Final
25 Order, the Settlement, nor any document referred to herein, nor any action taken to carry out the
26 Settlement, shall be construed or deemed an admission of liability, culpability, negligence, or
27 wrongdoing on the part of Defendant.

28 11. Pursuant to the Settlement Agreement, upon entry of this Final Order, Plaintiff and

1 each Settlement Class Member shall fully release and discharge the Released Parties pursuant to
2 the following release, which provides:

3 any and all claims that are asserted in the operative complaint and
4 which could have been asserted based on the facts alleged in the
5 complaint, which are or could be the basis of claims for failure to
6 issue accurate itemized wage statements under Labor Code § 226(a),
7 claims for penalties under the Private Attorneys General Act of
8 2004, claims for restitution and other equitable relief, liquidated
9 damages, punitive damages, or penalties.

10 12. Plaintiff and all Settlement Class Members who have not been timely and properly
11 excluded from the Settlement Class, and any person acting on their behalf, are permanently barred
12 and enjoined from: (i) filing, commencing, prosecuting, intervening in, participating in (as class
13 members or otherwise), or receiving any benefits or other relief from, any other lawsuit, in any
14 state or federal court, arbitration, or administrative, regulatory or other proceeding or order in any
15 jurisdiction based on the Released Claims; and (ii) organizing such non-excluded Class Members
16 into a separate class for purposes of pursuing as a purported class action (including by seeking to
17 amend a pending complaint to include class allegations, or by seeking class certification in a
18 pending action) any lawsuit based on or relating to the Released Claims;

19 13. The Settlement Agreement provides that the Gross Settlement Amount is fifty
20 thousand dollars and zero cents (\$50,000.00). The Net Settlement Amount shall be determined
21 according to the terms of the Settlement Agreement.

22 14. The Court orders the calculations and the payments to be made and administered in
23 accordance with the terms of the Settlement Agreement.

24 15. The Court hereby finds that Plaintiff and Class Counsel adequately represented the
25 Settlement Class for purposes of entering into and implementing the settlement. The Court hereby
26 confirms Kingsley & Kingsley, APC and Davtyan Law Firm, Inc. as Class Counsel in the Action.

27 16. The Court hereby finds the unopposed application of Class Counsel for a costs and
28 attorneys' fees award provided for under the proposed Settlement to be fair and reasonable in light
of all the circumstances and is hereby granted. Of the Gross Settlement Amount, \$16,666.67 shall
be paid for attorney fees and \$XX shall be paid for litigation costs.

17. The unopposed application of Class Counsel for an Enhancement Award is hereby

1 granted. Of the Gross Settlement Amount, a \$XX Enhancement Award shall be allocated to
2 Named Plaintiff DANIEL STEPHENSON.

3 18. The unopposed application of Class Counsel for claims administration fees to
4 <<Name.of.Claims.Admin>> is hereby granted. Of the Gross Settlement Amount, \$XX shall be
5 paid for settlement administration fees.

6 19. The Court approves the PAGA Penalties in the amount of \$XX. The Court
7 approves 75% of the PAGA Penalties being allocated to the LWDA in the amount of \$XX. The
8 Court further directs that the remaining 25% of the PAGA Penalties, in the amount of \$XX shall be
9 allocated to the Participating Class Members.

10 20. If a Settlement Class Member does not cash his or her settlement check within 160
11 days, the uncashed funds shall be transmitted by the Settlement Administrator to the non-profit
12 Bet Tzedek pursuant to Cal. Code Civ. Proc. section 384(b)(3)(C). The Court finds there is a
13 strong nexus between the mission of Bet Tzedek and the interests of the Settlement Class members.

14 21. Defendant shall have no further liability for costs, expenses, interest, attorneys'
15 fees, or for any other charge, expense, or liability, except as provided for in the Settlement
16 Agreement.

17 22. The Parties are authorized, without further approval from the Court, to agree to and
18 to adopt such amendments, modifications and expansions of this Stipulation and all exhibits
19 attached hereto as (i) are consistent with the Final Judgment; and (ii) do not limit the rights of
20 Settlement Class Members under the Stipulation.

21 23. Pursuant to California Rule of Court Rule 3.769(h) and C.C.P. §664.4, the Court
22 shall retain continuing jurisdiction over the Actions, the Parties, and the Settlement Class, as well
23 as the administration and enforcement of the terms of the Settlement of this action to enforce the
24 terms of the judgment. Without affecting the finality of the Final Judgment, the Court shall retain
25 continuing jurisdiction over the Actions, the Parties, and the Settlement Class, as well as the
26 administration and enforcement of the Settlement. Any disputes or controversies arising with
27 respect to the interpretation, consummation, enforcement, or implementation of the Settlement
28 shall be presented by motion to the Court; provided however, that nothing in this Part shall restrict

1 the ability of the Parties to exercise their rights to terminate the Settlement pursuant to the terms
2 of the Settlement Agreement.

3 24. This Final Order shall constitute a final judgment.

4 25. The Court hereby dismisses the action (including all individual claims and Released
5 Claims presented thereby) with prejudice, without fees or costs to any party except as provided in
6 the Settlement Agreement.

7
8 **DATED:** _____
9 **JUDGE OF THE SUPERIOR COURT**

(Proof of Submission to LWDA)

EXHIBIT "2"

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On February 28, 2022, I served all interested parties in this action the following documents described as: **DECLARATION OF KELSEY M. SZAMET IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

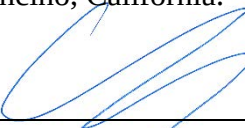
Daniel K. Klingenberger dklingenberger@lebeauthelen.com LeBeau Thelen LLP 5001 E. Commercenter Drive, Suite 300 P.O. Box 12092 Bakersfield, CA 93389-2092	Emil Davtyan emil@davtyanlaw.com Davtyan Law Firm, Inc. 880 E. Broadway Glendale, CA 91205
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[XX] (BY ELECTRONIC MAIL TRANSMISSION): I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the above email address(es).

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 28, 2022, at Encino, California.



Michelle A. Tanzer