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Attorneys for Plaintiffs, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

Coordination Proceeding Special Title
(Rule 3.550)

AMERICAN TIRE WAGE AND HOUR
CASES

*Rafael Martinez, et al. v. American Tire
Distributors, Inc., et al.*
Case No.: CIVSB2133396
(San Bernardino Superior Court – 12-8-21)

*Germaine Tanner Sr., et al. v. American
Tire Distributors, Inc., et al.*
Case No.: 22CECG00735
(Fresno County Superior Court – 03-8-22)

Case No.: JCCP 5239
[Assigned to the Hon. Judge David Cohn, Dept.
S26, for all purposes]

**DECLARATION OF BRIAN J. MANKIN IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing
Date: April 25, 2023
Time: 10:00 a.m.
Dept.: S26

1 I, Brian J. Mankin, state and declare:

2 1. I am an attorney licensed to practice before all of the courts of the State of
3 California. I manage the employment department within my firm where I am also a Partner. I
4 represent Plaintiff Rafael Martinez in this action and I am thoroughly familiar with and have
5 personal knowledge of all of the facts set forth herein. I submit this declaration in support of
6 Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a
7 witness, I could and would competently testify thereto.

8 **COUNSEL'S EXPERIENCE**

9 2. I have been a member, in good standing, of the State Bar of California since 2001.
10 I am admitted to practice in the United States District Courts for the Central and Southern
11 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
12 courts in California.

13 3. I have handled over 500 employee vs. employer litigation matters during my 22
14 years in practice. Over the last 15 years, my practice has almost entirely consisted of
15 representing employees, the majority of which has included class action and representative
16 action wage and hour matters. In total, I have handled over 250 class action and representative
17 action wage/hour cases, and have been appointed by the court as class counsel and have received
18 final court approval and judgment in close to half of those actions to date, and anticipate
19 receiving final approval in many more of those in the future.

20 4. As part of these settlements and judgments, I have recovered in excess of \$250
21 million in damages for my clients and the class members (who often work as nurses, ambulance
22 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
23 countless other trades). At one point, my team and I held the record for the largest known
24 PAGA-only settlement in California's history - a \$12.5 million-dollar court approved settlement,
25 which followed extensive litigation, summary adjudication and writs to the CA Supreme Court
26 against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior Court).

27 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
28 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior

1 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action against
2 Walmart that was tried to jury in District Court for the Central District, wherein the jury awarded
3 Plaintiffs over \$6 million. Following the successful outcome in trial, both cases were appealed.

4 6. Over the last four or five consecutive years, I have been selected by my peers as a
5 “Super Lawyer” in Employment Litigation, a distinction that only 5% of lawyers receive.

6 **BRIEF SUMMARY OF THE SETTLEMENT**

7 7. Following a contested but productive mediation, Plaintiffs and Defendant
8 (collectively, the “Parties”) finalized a Class Action and PAGA Settlement Agreement resolving
9 the wage and hour claims of the putative class (the “Settlement Agreement”). As of the filing of
10 this Motion, Plaintiffs obtained all signatures to the Settlement Agreement, but Defendant has
11 not. Therefore, I’m attaching a partially signed version as **Exhibit A**, and we will file a
12 supplemental declaration attaching the fully signed version once the signatures are provided by
13 Defendant. The Settlement Agreement seeks to release and discharge Defendant from the claims
14 brought against it in exchange for Defendant’s agreement to pay \$2,195,000 on a non-
15 reversionary, non-claims made basis (each Class Member will receive his/her share of the Net
16 Settlement Amount without having to submit a claim form or take any action, except for those
17 who opt-out). Plaintiffs seek to represent a class of all current and former nonexempt employees
18 employed by Defendant in California at any time during the Class Period of June 16, 2019,
19 through February 6, 2023.

20 8. Under the terms of the Settlement Agreement, Defendant will not oppose Class
21 Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the
22 Settlement Amount, Class Counsel’s litigation expenses not to exceed \$25,000, settlement
23 administrator costs of \$13,000, PAGA Penalties of \$150,000 of which \$112,500 will be paid to
24 the LWDA and the remaining \$37,500 will be paid to the Aggrieved Employees, and service
25 awards not to exceed \$10,000 to each Plaintiff. After subtracting the agreed-upon deductions
26 from the Settlement Amount, approximately \$1,255,333.34 will be available to pay
27 approximately 950 Class Members who do not opt-out of the settlement, as follows:
28

<i>Settlement Amount</i>	\$ 2,195,000.00
Attorneys' Fees (1/3)	\$ 731,666.66
Litigation Costs (not to exceed)	\$ 25,000.00
Administrator Costs	\$ 13,000.00
PAGA Penalties	\$ 150,000.00
Class Representative Service Awards	\$ 20,000.00
<i>Net Settlement Amount</i>	\$ 1,255,333.34

9. Assuming 1950 Class Members, the average payment to each Class Member will be approximately \$1,321.40 (\$1,255,333.34 / 950). However, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period, with each Work Week having a value of approximately \$13.72 (\$1,255,333.34 / 91,477 estimated Work Weeks). In addition, approximately 775 Aggrieved Employees will receive a share of the \$37,500 PAGA Penalties (25% of the total \$150,000 allocation), calculated pro-rata based on Weeks Worked during the PAGA Period.

10. Each Class Member will receive the Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks Worked he/she is credited with working during the Class and PAGA Periods (attached hereto as **Exhibit B**).

PROCEDURAL BACKGROUND

11. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested legal and factual issues, I believe this settlement to be fair, reasonable, and adequate.

12. After being retained by Plaintiff, we submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), which is attached hereto as **Exhibit C**, and simultaneously sent a letter to Defendant requesting the production of his personnel and timekeeping records to further evaluate the wage and hour claims. The LWDA ultimately declined to assert jurisdiction

1 over the PAGA, thereby giving Plaintiff the right to bring PAGA claims.

2 13. On December 8, 2021, we filed a putative class action complaint alleging wage-
3 and-hour violations against Defendant. Then, on February 8, 2022, we filed the operative First
4 Amended Complaint, alleging class and PAGA claims, including: (a) failure to pay minimum
5 wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide
6 rest breaks, (e) failure to failure to timely pay wages each period and upon separation of
7 employment, (h) failure to provide accurate itemized wage statements, and (i) unfair and unlawful
8 competition.

9 14. Defendant retained counsel and immediately began to defend the case. On March
10 3, 2022, Defendant removed the *Martinez* Action to the U.S. District Court for the Central District
11 of California under purported diversity jurisdiction). Plaintiff contended that the removal was
12 improper, and the parties commenced a meet and confer which resulted in Defendant agreeing to
13 remand the action back to San Bernardino County Superior Court. After remand, Plaintiff
14 propounded a full set of written discovery on ATD, including special and form interrogatories,
15 requests for production, and requests for admission.

16 15. On or around May 11, 2022, counsel for Plaintiff Tanner filed a petition to
17 coordinate the *Tanner* Action with the *Martinez* Action. On August 12, 2022, this Court granted
18 Plaintiff Tanner's petition for coordination and both cases are now assigned to this department.
19 After the coordination proceedings, counsel for Plaintiffs Martinez and Tanner met and conferred
20 and agreed to prosecute the claims under a Joint Prosecution Agreement.

21 16. After coordination, the parties discussed how to proceed and, ultimately, agreed to
22 attend private mediation.

23 17. In preparation for the mediation, the Parties informally exchanged documents and
24 information that allowed both sides to calculate the potential damages and evaluate potential risk,
25 including policies and procedures pertaining to each claim alleged, and statistics relating to the
26 number of current and former employees, number of shifts, pay periods worked and other things.
27 ATD also provided their written policies and practices and a robust sampling of payroll and
28 timekeeping records for approximately 25% of all Class Members. This information enabled my

1 office and, presumably, Defense counsel to take a deep dive into the claims. Additionally, during
2 this process, my office analyzed, researched, and investigated the potential issues, including
3 matters related to the calculation of damages, trial, and appellate issues and risks.

4 18. On March 2, 2023, Plaintiffs and ATD participated in mediation with Marc Feder
5 a well-respected employment mediator. The matter resolved pursuant to a mediator's proposal
6 and the Parties entered into the Settlement Agreement submitted herewith. The Parties now seek
7 the Court's preliminary approval of the Settlement.

8 **THE WAGE AND HOUR CLAIMS, CLASS COUNSEL'S INVESTIGATION, AND**
9 **EVALUATION OF THE SETTLEMENT**

10 19. The putative Class in this case consists of approximately 950 similarly situated
11 nonexempt employees who worked for ATD during the Class Period, and Plaintiffs alleged
12 numerous wage and hour violations on behalf of the Class Members. However, Defendant
13 vigorously contested and denied each of Plaintiffs' material allegations on the merits and as to
14 the propriety of a class action or PAGA representative action, as discussed herein.

15 20. In preparation for mediation, the team at Gaines & Gaines, APLC (our co-
16 counsel), along with Peter Carlson, a senior associate within my office, and I formulated a
17 damages model and risk analysis based upon detailed data obtained through informal discovery
18 and information exchanges. The summary of the claims below is based on calculations by our
19 expert and us, and the risks that we potentially faced, giving significant credit to the defenses that
20 Defendant raised or would likely raise in further proceedings. Following the informal exchange
21 and other information provided by Defendant, we estimated the following data points through the
22 date of mediation: (1) 950 Class Members, (2) 400 *former* Class Members for purposes of Labor
23 Code § 203, (3) 91,477 workweeks, (4) 424,000 shifts worked, and (4) approximately 27,600
24 biweekly wage statements during the PAGA Period. From these metrics, and when factoring in
25 claim certification probabilities and liability probabilities, we formulated detailed damages
26 models to value the claims in preparation for mediation and to reach a realistic and reasonable
27 resolution.
28

1 21. Here, there were three categories of claims alleged by Plaintiffs: (1) unpaid wage
2 claims under various theories, (2) meal and rest break violations, and (3) derivative claims for
3 waiting time and wage statement penalties due to the other alleged violations.

4 22. As to the unpaid wage claims, Plaintiffs alleged two distinct theories of liability.
5 First, Plaintiffs alleged that ATD failed to pay all required overtime wages due to a practice that
6 of rounded employee *rates of pay* (not hours worked) down rather than up when the rate ended
7 with a “5” in the third decimal (*e.g.*, Plaintiff Martinez was paid \$20.29 per hour and the one-half
8 overtime premium had to be paid at \$10.145 [without rounding] or \$10.15 [with rounding], but
9 Defendant only paid the one-half overtime premium at \$10.14). Second, Plaintiffs claimed that
10 Defendant, at times, paid bonuses to Class Members yet failed to include that additional
11 compensation in the regular rate for purposes of calculating overtime wages. The maximum
12 value of these claims was small (only \$50,000), but the real value was in Labor Code § 203
13 waiting time penalties (discussed below). ATD vehemently opposed these unpaid wage claims
14 on the merits and as to the propriety of class certification. Due to the defenses and arguments
15 raised, Plaintiffs assigned a 20% risk for each respective unpaid wage claim at the class
16 certification stage and an additional 20% risk on the merits. In sum, Plaintiffs’ counsel calculated
17 the risk-adjusted value of the unpaid wage claims as \$32,000.

18 23. Plaintiff also alleged meal and rest break claims against Defendant. After expert
19 review of the timekeeping records, Plaintiffs’ counsel estimated a 46.8% violation rate for meal
20 breaks and a 40.5% violation rate for rest breaks. Given the total number of shifts at issue (an
21 estimate of 424,000), this led to 198,432 alleged meal violations and 171,720 alleged rest break
22 violations. This established a maximum potential value for these claims of \$8,261,792 (370,152
23 violations multiplied by the average hourly rate of \$22.32 per § 226.7).

24 24. However, ATD raised numerous arguments in response to this claim, including
25 that it maintained fully compliant written policies and specifically authorized the Class Members
26 to take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a
27 short/late break. Therefore, Defendant asserted that a fact-finder would have to determine for
28 each Class Member whether a break was missed and why, and why a break was noncompliant or

1 nonexistent, because if it was by the employee's choice, no liability attaches to Defendant.
2 These defenses are factored into Plaintiffs' analysis in two ways. First, these issues raise
3 questions regarding whether the meal and rest break claims could be certified, and Plaintiffs
4 placed a 30% risk at the class certification stage for meal periods and a 40% risk for rest breaks.
5 Second, these defenses also go toward the merits given the evidentiary question of proving the
6 number of meal and rest violations. As such, Plaintiffs placed a 30% risk on the merits for meal
7 breaks, and an additional 40% risk on the merits for rest breaks, setting the risk-adjusted value
8 for the combined meal and rest break claims at \$3,550,014.

9 25. Finally, Plaintiff alleged claims for waiting time penalties and wage statement
10 violations. But these claims were entirely derivative of the claims above, meaning that they only
11 had merit if the claims for unpaid wages or meal/rest breaks were successful. The maximum
12 values for these claims were as follows: (1) \$2,142,720 [400 former employees x \$22.32 per
13 hour x 8 hours per day x 30 days], and (2) \$2,721,250 for wage statement violations [27,600
14 wage statements at the \$50/\$100 formula under § 226(e)].

15 26. But ATD raised a variety of defenses to these derivative claims that impacted the
16 valuation. Namely, ATD argued that the wage statements did not violate Labor Code § 226 and,
17 even if there was a "technical" violation, Plaintiffs would be unable to prove the required
18 "knowing and intentional" and "injury" elements. Based on these facts and defenses, Plaintiffs
19 placed a nominal 20% risk at class certification (mirroring the claims on which the wage
20 statement claim was based) and estimated another 40% risk on the merits, leading to a risk-
21 adjusted value of \$1,306,200 for the wage statement claims.

22 27. Then, as to the waiting time penalty claim, Plaintiffs' valuation had to account for
23 the fact that this claim was derivative of the unpaid wage and meal/rest break claims and, if those
24 claims failed at certification or on the merits, there would be no waiting time penalties owed, so
25 the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage
26 and/or meal/rest claims succeeded at certification and on the merits, Plaintiffs would have to
27 prove that the violations (if any existed) were "willful" under the meaning of Labor Code § 203.
28 And, here, Defendant argued there was no "willful" violation since they had compliant written

1 policies and any deviations therefrom were inadvertent and unintentional. As a result of this
2 analysis, Plaintiffs' counsel applied a 30% risk at class certification and a 40% risk on the merits,
3 leading to a risk-adjusted value of \$899,942.

4 28. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff
5 estimates the risk-adjusted class recovery as follows:

6	• Unpaid Wage Claims	\$ 32,000
7	• Meal and Rest Break Claims	\$ 3,550,014
8	• Wage Statement Claims	\$ 1,306,200
9	• Waiting Time Penalty Claims	<u>\$ 899.942</u>
10	• Total Risk Adjusted Penalties and Damages	\$ 5,788,156

11 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

12 29. The settlement was the product of extensive arm's length negotiations, facilitated
13 by an experienced mediator. Though cordial and professional, the settlement negotiations were
14 adversarial and non-collusive in nature. The settlement reached is the product of substantial
15 effort by the parties and their counsel. Although we believed that there was a possibility of
16 certifying the claims, we recognized the potential risk, expense, and complexity posed by
17 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
18 on the damages awarded, and/or on an appeal that can take several more years to litigate.

19 30. The settlement will result in a fair payment to each class member based on the
20 number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiffs and their
21 counsel have diligently investigated the claims and defenses on behalf of the Class Members and
22 worked to achieve a resolution of the claims to maximize the recovery by avoiding further
23 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
24 further litigation described above and weighing them against the benefits of a known
25 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
26 agreed to is believed to be in the best interest of Plaintiffs and the Class, and is a fair and
27 reasonable resolution of the claims alleged.

28 31. Plaintiffs' counsel brought to bear a great deal of experience in negotiating the

1 settlement of this case. As detailed herein, Plaintiffs' counsel engaged in the necessary discovery
2 and investigation, making it possible to exercise informed judgment throughout the settlement
3 process, including significant document review (e.g. documents pertaining to Defendant's
4 policies and procedures, personnel documents, among others), and conducted an extensive
5 analysis of the detailed class-wide data provided by Defendant.

6 32. Based on my experience in other cases, including wage and hour matters, I
7 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
8 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
9 settlement at this time is in the best interests of the class. The settlement provides each class
10 member with compensation for the alleged violations when viewed in relation to the costs and
11 risks inherent in obtaining class certification and proceeding to trial.

12 33. Plaintiffs' counsel, as well as Defendant's counsel, fully endorse the terms and
13 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

14 34. Of course, the settlement amount represents a compromise figure, taking into
15 account the various risks surrounding class certification and the merits of Defendant's asserted
16 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
17 members, with no reversion to Defendant.

18 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

19 35. Plaintiffs each seek an enhancement payment (Service Award) of \$10,000 for
20 their service to the class, which I believe is fair and warranted. Each Plaintiff came forward to
21 recover unpaid wages and effectuate a policy and practice change that benefitted all other Class
22 Members. They assumed significant risk in bringing this litigation—namely, had they lost, they
23 would have been ordered to pay Defendant's costs.

24 36. Plaintiffs provided invaluable assistance to my office (along with my co-counsel's
25 office) and the Class in this case, including providing factual background for the pleadings;
26 reviewing the litigation documents; providing information and documents about Defendant's
27 policies and practices; participating in phone calls to discuss litigation and settlement strategy;
28 and reviewing the settlement documents. Plaintiffs agreed to participate in this case with no

1 guarantee of personal benefit. At final approval, Plaintiffs will each submit a comprehensive
2 declaration setting forth all of the reasons why they believe that the service award should be
3 approved.

4 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
5 **REQUESTED FEES AND COSTS**

6 37. As set forth above, I have handled over 250 class and representative actions, have
7 been appointed as class counsel and have successfully resolved over half of those cases, and
8 many others remain pending and will successfully resolve in the future.

9 38. When this case was taken on a contingency fee basis, with my firm agreeing to
10 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
11 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
12 and mediation costs. There was never a guarantee that we would recoup those expenditures.

13 39. It is my experience that attorney fee awards of one-third of a common fund
14 settlement is the standard in California. In this case, Plaintiffs' counsel agreed to seek one-third
15 of the Settlement Amount for attorneys' fees. Defendants do not oppose this fee request. The fee
16 is further warranted because it is within the range of reasonableness typically awarded in class
17 actions. The litigation costs are reasonably capped at \$20,000 and will be based on the actual
18 amount of costs incurred at the time of final approval.

19 **SETTLEMENT ADMINISTRATOR**

20 40. The parties request that the Court appoint Phoenix Class Action Administration
21 Solutions to serve as the Administrator. Phoenix is experienced in administering class action
22 settlements, and has provided a proposal to administer this settlement for a total of \$13,000,
23 which is attached hereto as **Exhibit D**.

24 **SUBMISSION TO THE LWDA**

25 41. Plaintiff has concurrently submitted the settlement to the LWDA in accordance
26 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit E**.

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EXHIBIT “A”

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Attorneys for Defendant American Tire Distributors, Inc.

[Additional Counsel for Plaintiffs and Defendant listed on next page]

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Case No.: JCCP 5239
[Assigned to the Hon. David Cohn, Dept. S26]

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

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18 Attorneys for Defendant American Tire Distributors, Inc.

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiffs Rafael Martinez and Germaine Tanner, Sr., individually and on behalf of all
3 others similarly situated, and on behalf of the State of California, and Defendant American Tire
4 Distributors, Inc. and is approved by their respective counsel of record, subject to the terms and
5 conditions hereof and the Court's approval.

6 **A. Definitions**

7 1. "Action," "Coordinated Action," or "Lawsuit" means and refers to the
8 coordinated proceeding entitled *American Tire Wage and Hour Cases*, JCCP Case No. 5239,
9 which includes the following cases: (a) *Rafael Martinez v. American Tire Distributors, Inc.*, San
10 Bernardino County Superior Court, Case No. CIVDS213396 (the "*Martinez Action*"), and (b)
11 *Germaine Tanner, Sr., v. American Tire Distributors, Inc.*, Fresno County Superior Court Case
12 No. 22CECG00735 (the "*Tanner Action*").

13 2. "Administrator" means and refers to Phoenix Class Action Administration
14 Solutions, the third-party class action settlement administrator agreed to by the Parties, that will
15 provide the Notice to the Class Members and distribute the settlement amounts as described in
16 this Agreement.

17 3. "Administration Costs" means the costs payable from the Settlement Amount to
18 the Administrator for administering this Settlement, including, but not limited to, printing,
19 distributing, and tracking documents for this Settlement, tax reporting, and deposit of the
20 employee and employer share of payroll taxes, unclaimed property due diligence, reporting and
21 remittance obligations, distributing the Settlement Amount, and providing necessary reports and
22 declarations, as requested by the Parties. The Administration Costs shall be paid from the
23 Settlement Amount, including, if necessary, any such costs in excess of the amount represented
24 by the Administrator as being the maximum costs necessary to administer the Settlement.

25 4. "Aggrieved Employee(s)" means all current and former nonexempt employees
26 employed by Defendant in California at any time during the PAGA Period.

27 5. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
28 Action and PAGA Settlement Agreement and Release of Claims.

6. “Class” is defined all current and former nonexempt employees employed by Defendant in California at any time during the Class Period.

7. “Class Member(s)” refers to individual members of the Class.

8. “Class Counsel” refers to Brian Mankin and Peter Carlson of Lauby, Mankin & Lauby LLP and Daniel Gaines, Alex Katofsky, and Evan Gaines of Gaines & Gaines, APLC.

9. “Class Data” means a complete list that Defendant will diligently and in good faith compile from their records and provide to the Administrator on one spreadsheet which shall include, for each Class Member, the individual’s full name; last known address; Social Security Number; total Weeks Worked during the PAGA Period and the Class Period.

10. “Class Period” is deemed to be any time during the period of June 16, 2019 through February 6, 2023.

11. “Class Representatives” or “Plaintiffs” means and refers to Plaintiffs Rafael Martinez and Germaine Tanner, Sr.

12. “Complaint” refers collectively to: (a) the operative First Amended Complaint in the *Martinez* Action, filed on February 8, 2022 in San Bernardino County Superior Court, and (b) the operative First Amended Complaint in the *Tanner* Action, filed on April 4, 2022 in Fresno County Superior Court.

13. “Court” (or “Judge”) means the California Superior Court, County of San Bernardino.

14. “Defendant” means and refers to American Tire Distributors, Inc.

15. “Defendant’s Counsel” or “Defense Counsel” means and refers to Littler Mendelson, P.C.

16. “Effective Date” means the date upon which both of the following have occurred: (a) approval of the settlement is granted by the Court, or other court assuming jurisdiction of the Coordinated Action, and (b) the Court’s judgment approving the settlement becomes Final. As used herein, “Final” shall mean the latest of: (i) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the judgment, (ii) if there is an appeal of the Court’s judgment, the date the judgment is affirmed on appeal, the date of dismissal of such an appeal, or

1 the expiration of time to file a petition for writ of certiorari to the California Supreme Court, or
2 (iii) if a petition for writ of certiorari is filed, the date of denial of the petition for writ of
3 certiorari, or the date the judgment is affirmed pursuant to such a petition.

4 17. “Escalator Clause:” Defendant represents that there are approximately 950 Class
5 Members, who collectively worked a total of approximately 91,477 Workweeks during the Class
6 Period. If the total Workweeks (as contained in the Class Data) exceeds 100,624 (which is 110%
7 of the estimated Workweeks), then the Settlement Amount shall increase by \$24.00 for each
8 Workweek above 100,624.

9 18. “Final Approval” refers to the order of the Court granting final approval of this
10 Settlement Agreement and entering a judgment approving this Agreement on substantially the
11 terms provided herein or as may be modified by subsequent agreement of the Parties.

12 19. “Individual Class Payment” refers to each Participating Class Members share of
13 the Net Settlement Amount, as further discussed in Paragraph 48(c) below.

14 20. “Individual PAGA Payment” refers to each Aggrieved Employees share of the
15 PAGA Penalties, as further discussed in Paragraph 48(c) below.

16 21. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 48(b)
17 below.

18 22. “Notice” means the notice of proposed class settlement that will be sent to the
19 Class Members and which will advise each Class Member of the settlement and his or her
20 estimated Individual Class Payment and Individual PAGA Payment and will further advise of the
21 setting of a Final Approval Hearing.

22 23. “Objecting Class Member” means a Class Member, other than Plaintiffs, who
23 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 69(c)
24 below.

25 24. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
26 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
27 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
28 as the Individual PAGA payment allocated to each Aggrieved Employee.

1 25. “PAGA Period” is deemed to be any time during the period of December 8, 2020,
2 through February 6, 2023.

3 26. “Participating Class Member” means all Class Members who are deemed to
4 participate and receive an Individual Class Payment and do not opt-out by submitting timely
5 valid Requests for Exclusion.

6 27. “Parties” or “Settling Parties” mean Plaintiffs and Defendant, collectively.

7 28. “Preliminary Approval Date” means the date the Court approves the Settlement
8 Agreement and enters the Preliminary Approval Order.

9 29. “Preliminary Approval Order” means the judicial Order to be entered by the
10 Court, upon the application or motion of the Plaintiffs, preliminarily approving this Settlement
11 and providing for the issuance of the Notice to the Class, an opportunity to opt out of the
12 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
13 approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees
14 and costs. Provided that the motion is consistent with the terms herein, Defendant will not object
15 to Plaintiffs’ motion for preliminary approval but will be provided with an opportunity to review
16 and comment upon the motion before it is filed.

17 30. “QSF” means the Qualified Settlement Fund set up by the Administrator for the
18 benefit of the Participating Class Members and Aggrieved Employees, and from which the
19 settlement payments shall be made.

20 31. “Release” shall mean the release and discharge of the Released Class Claims by
21 Plaintiffs and all Participating Class Members and their assignees.

22 32. “Released Class Claims” or “Class Claims” by the Participating Class Members
23 upon Final Approval of the Settlement will include all claims alleged or those that could have
24 been alleged in the Complaint, which arose during the Class Period, and based solely upon the
25 facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime
26 wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to timely
27 pay wages upon separation of employment, (f) failure to provide accurate itemized wage
28 statements, (g) unfair and unlawful competition, and (h) all other claims for statutory penalties

1 based on the facts or claims alleged in the Complaint.

2 33. “Released PAGA Claims” or “PAGA Claims” means any and all PAGA claims
3 that Plaintiffs alleged against the Released Parties, on behalf of themselves and the State of
4 California, based on the facts stated in the Complaint and in the LWDA notice letters, including
5 all PAGA claims seeking civil penalties premised upon (a) failure to pay minimum wages, (b)
6 failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest
7 breaks, (e) failure to timely pay wages each period and upon separation of employment, (f)
8 failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties
9 recoverable under PAGA based on the facts or claims alleged in the Complaint. The time period
10 governing the Released PAGA Claims shall be any time during the PAGA Period.

11 34. “Released Parties” means Defendant and its parents, subsidiaries, directors,
12 owners, shareholders, officers, agents, attorneys, insurers, servants, joint employers and
13 employees, past and present, and each of them and anyone acting in concert with foregoing.

14 35. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 69(a)
15 below.

16 36. “Response Deadline” is 45 calendar days from the date the Notice is mailed to the
17 Class Members.

18 37. “Service Payments” or “Service Awards” means the amount approved by the
19 Court to be paid to the Class Representatives in addition to their Individual Class Payment as
20 Participating Class Members and Individual PAGA Payment as Aggrieved Employees.

21 38. “Settlement Amount” is \$2,195,000.00, subject to the Escalator Clause and
22 exclusive of Defendant’s obligation to fund its share of payroll taxes, as further discussed in
23 Paragraph 48(c) below. With the exception of the Escalator clause, should it be triggered, and
24 Defendant’s payment of payroll taxes, in no event shall Defendant be required to pay more than
25 the Settlement Amount to effectuate settlement herein.

26 39. “Work Weeks” or “Weeks Worked” in the context of a Class Member means any
27 and all work weeks during the Class Period during which the Class Member worked at least one
28 day for Defendant. Likewise, in the context of Aggrieved Employees, it means any and all

1 weeks worked during the PAGA Period during which the Aggrieved Employee worked at least
2 one day for Defendant.

3 **B. General Terms**

4 40. On December 8, 2021, Plaintiff Martinez filed a putative class action in the San
5 Bernardino County Superior Court against Defendant. Then, on February 8, 2022, Plaintiff
6 Martinez filed his operative First Amended Complaint, alleging class and PAGA claims,
7 including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to
8 provide meal periods, (d) failure to provide rest breaks, (e) failure to failure to timely pay wages
9 each period and upon separation of employment, (h) failure to provide accurate itemized wage
10 statements, and (i) unfair and unlawful competition.

11 41. On March 8, 2022, Plaintiff Tanner filed a putative class action in Fresno County
12 Superior Court against Defendant. Then, on April 4, 2022, Plaintiff Tanner filed his operative
13 First Amended Complaint, alleging class and PAGA claims, including: (a) failure to pay all
14 minimum and overtime wages, (b) failure to provide rest periods, (c) failure to provide meal
15 periods, (d) failure to provide accurate itemized wage statements, (e) claims for injunctive relief
16 and restitution under the UCL, and (f) claims under PAGA.

17 42. Defendant denies Plaintiffs' claims and allegations and contends that neither the
18 Coordinated Action nor the separate *Martinez* and *Tanner* Actions are suitable for class
19 certification.

20 43. The Class Representatives believe they can proceed with the representative and
21 class claims, that the Coordinated Action is meritorious, and that class certification is
22 appropriate.

23 44. The Parties have conducted a thorough investigation into the facts of the
24 Coordinated Action. This includes conducting an extensive exchange of informal discovery,
25 including a sampling of payroll and timekeeping records for Class Members. Class Counsel is
26 both knowledgeable about and has done extensive research with respect to the applicable law and
27 potential defenses to the claims of the Class. Class Counsel has diligently pursued an
28 investigation of the Class Members' claims against Defendant. Based on the foregoing data and

1 on their own independent investigation and evaluation, Class Counsel is of the opinion that the
2 settlement with Defendant for the consideration and on the terms set forth in this Settlement
3 Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in
4 light of all known facts and circumstances, including the risk of significant delay and uncertainty
5 associated with litigation, various defenses asserted by Defendant, and numerous potential
6 appellate issues.

7 45. On March 2, 2023, Plaintiffs and Defendant participated in a full-day mediation
8 with Marc Feder, Esq., a well-respected wage-and-hour mediator. At the conclusion of
9 mediation and extensive arms-length negotiations, Mr. Feder issued a mediator's proposal, which
10 was accepted by the Parties.

11 46. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
12 to be performed or judgment to be entered pursuant to the terms of the Settlement and
13 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
14 any statute or law or liability on the claims or allegations in the Action.

15 47. Stipulation for Class Certification. For settlement purposes only, Defendant will
16 stipulate that the Class Members described herein who do not Request Exclusion from the Class
17 may be conditionally certified as a Class. This stipulation to certification is in no way an
18 admission that class action certification is proper and shall not be admissible in this or in any
19 other action except for the sole purposes of enforcing this Agreement. Should, for whatever
20 reason, the Court fail to issue Final Approval, or should Defendant exercise their rights under
21 paragraph 81 below, the Parties' stipulation to class certification as part of the Settlement shall
22 become null and void ab initio and shall have no bearing on, and shall not be admissible in
23 connection with, the issue of whether certification would be appropriate in a non-settlement
24 context. Defendant expressly reserves its rights and declares that it would continue to oppose
25 class certification and the substantive merits of the case should the Court fail to issue Final
26 Approval. Plaintiffs expressly reserve their rights and declares that they will continue to pursue
27 class certification and a trial should the Court fail to issue Final Approval.
28

1 **C. Terms of Settlement**

2 48. The financial terms of the Settlement are as follows:

3 (a) Settlement Amount: The Parties agree to settle the Coordinated Action for
4 the Settlement Amount, subject to the Escalator Clause and Defendant's obligation to separately
5 pay its share of payroll taxes on the wage portion of the Individual Class Payments, which is the
6 maximum amount that will be paid by Defendant and includes Individual Class Payments, Class
7 Counsel's Attorneys' Fees and Costs Award, the Service Payments to the Class Representatives,
8 Administration Costs, and PAGA Penalties.

9 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
10 Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payments to the Class
11 Representatives as awarded by the Court, the Administration Costs, and PAGA Penalties. If the
12 Court reduces the Attorneys' Fees and Costs Award, Service Awards, or Administrator Costs, or
13 either increases or decreases the amount allocated to the PAGA Penalties, the difference shall be
14 placed in the Net Settlement Amount and allocated to the Class.

15 (c) The Individual Class Payment for each Class Member will be calculated
16 by the Administrator using the Class Data provided by Defendant as follows. Compensable
17 workweeks will be all Weeks Worked by the Class Members during the Class Period. The
18 dollars per compensable work week will be calculated by dividing the total Weeks Worked by
19 Class Members into the Net Settlement Amount to determine a per work week value
20 ("Workweek Value"). The Workweek Value will be multiplied by the number of Weeks
21 Worked by a Participating Class Member during the Class Period to determine the distribution
22 for a Participating Class Member. If there are any timely submitted Requests for Exclusion, the
23 Administrator shall proportionately increase the Individual Class Payments for each Participating
24 Class Member so that the amount distributed to Participating Class Members equals 100% of the
25 Net Settlement Amount.

26 (d) Allocation of Individual Class Payments: The Individual Class Payments
27 to Participating Class Members will be allocated as follows: 10% will be allocated as wages
28 subject to withholding of all applicable local, state and federal taxes; and 90% will be allocated

1 for interest and statutory penalties (pursuant to, *e.g.*, California Labor Code sections 203, 210,
2 226) from which no taxes will be withheld. The Administrator will issue to each Participating
3 Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect
4 to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

5 (e) Service Payments to Class Representatives: The amount, if any, awarded
6 as Service Payment(s) will be set by the Court in its discretion, not to exceed \$10,000 for each
7 Class Representative, in exchange for the service that Plaintiffs performed on behalf of the Class.
8 Defendant agrees not to oppose this request. The Service Payment to Plaintiffs will be paid out
9 of the Settlement Amount. The Class Representatives will each be issued an IRS Form 1099 in
10 connection with this payment. Plaintiffs shall be solely and legally responsible to pay all
11 applicable taxes on this payment. The Parties agree that any amount awarded as the Service
12 Payments to Plaintiffs less than the requested amount shall not be a basis for Class Counsel to
13 void this Settlement Agreement. Should the Court approve a lesser amount for the Service
14 Payments, the difference shall be added to the Net Settlement Amount to be distributed to the
15 Participating Class Members.

16 (f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a
17 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
18 Settlement Amount, plus reasonable litigation costs not to exceed \$25,000 ("Attorney's Fees and
19 Cost Award"). Defendant agrees not to oppose any contention by Class Counsel that attorneys'
20 fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be
21 paid from the Settlement Amount, and, except for this award, Defendant shall have no further
22 obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court
23 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
24 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court
25 order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
26 Settlement Agreement or otherwise void the Settlement. The Administrator shall issue to Class
27 Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the
28 Court.

1 (g) Administration Costs: The fees and other charges of the Administrator
2 will be paid from the Settlement Amount, not to exceed \$13,000, unless (1) the Escalator Clause
3 is triggered (whereby any reasonable increase in Administration Costs shall be paid from the
4 increased Settlement Amount, subject to Court approval), or (2) as otherwise approved by all
5 Parties and the Court.

6 (h) PAGA Penalties: The Parties agree that \$150,000 is allocated to PAGA
7 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
8 amount, \$112,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under
9 PAGA and \$37,500 (25%) will form the Individual PAGA Payments to the Aggrieved
10 Employees, which shall be calculated and allocated pro-rata on a Work Week basis, which will
11 be treated entirely as civil penalties, and shall be reported as required on an IRS Form 1099.
12 Class Counsel shall give proper notice to the LWDA of the Settlement.

13 (i) Tax Liability: Class Counsel and Defendant make no representations as to
14 the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiffs and the
15 Class Members are not relying on any statement or representation by Class Counsel or Defendant
16 in this regard. Plaintiffs, Participating Class Members, and Aggrieved Employees understand
17 and agree that they will be solely responsible for the payment of any taxes and penalties assessed
18 on their respective Individual Class Payments and Individual PAGA Payments, described herein.
19 Forms 1099 will be distributed in the manner required by the Internal Revenue Code of 1986 (the
20 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated
21 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
22 set forth in this Section may be modified in a manner to bring Defendant into compliance with
23 any such changes. Plaintiffs, Participating Class Members, and Aggrieved Employees
24 understand and agree that they will be solely responsible for the payment of any taxes and
25 penalties assessed on their respective payments described herein.

26 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
27 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
28 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 SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISOR’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

(k) “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under no circumstances will any portion of the Settlement Amount revert to Defendant. Participating Class Members and Aggrieved Employees will not have to make a claim in order to receive an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of Individual Class Payment or Individual PAGA Payments will be made directly to each Participating Class Member and Aggrieved Employee. The Administrator shall be responsible for accurately and timely reporting and remittance obligations with respect to unclaimed funds as

1 a result of a Participating Class Member and/or Aggrieved Employee not cashing any checks
2 delivered pursuant to the Settlement by the check cashing deadline, as set forth herein.

3 (l) Class Counsel and Plaintiffs believe that the Settlement is fair and
4 reasonable and will so represent same to the Court.

5 **D. Release by the Participating Class Members**

6 49. Upon entry of the Final Approval Order and Defendant's funding of the
7 Settlement Amount, and except as to such rights or claims as may be created by this Agreement,
8 Plaintiffs and the Participating Class Members will forever completely release and discharge the
9 Released Parties from the Released Class Claims for the Class Period.

10 50. Each Participating Class Member will be deemed to have made the foregoing
11 Release as if by manually signing it.

12 51. Class Representatives, on behalf of themselves and the Class, acknowledge and
13 agree that the claims for unpaid wages and untimely payment of wages in the Action are
14 disputed, and that the payments set forth herein constitute payment of all sums allegedly due to
15 them. Class Representatives, on behalf of themselves and the Class, acknowledge and agree that
16 Labor Code § 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides
17 in pertinent part as follows: "An employer shall not require the execution of any release of any
18 claim or right on account of wages due, or to become due, or made as an advance on wages to be
19 earned, unless payment of those wages has been made."

20 **E. Release of PAGA Claims**

21 52. Upon entry of the Final Approval Order and Defendant's funding of the
22 Settlement Amount, Plaintiffs – in their individual capacity and on behalf of the State of
23 California and LWDA – shall completely release and discharge the Released Parties from the
24 Released PAGA Claims for the PAGA Period.

25 53. Regardless of submitting a valid Request for Exclusion, neither Plaintiffs nor any
26 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
27 releasing the Released PAGA Claims.

28 54. It is the intent of the Parties that the Final Approval Order shall have full

equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

F. Release by Plaintiffs and Class Representatives

55. Class Representatives do hereby, for themselves and their spouses, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and assigns forever and completely release and discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the beginning of time through the execution of this Agreement, whether known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to Class Representatives' employment with Defendant or the remuneration for or termination of such employment (the "Class Representatives' Claims").

56. Without limiting the generality of the foregoing, this general release by Plaintiffs includes all federal, state and local statutory claims, federal and state common law claims (including but not limited to those for contract, tort and equity), including without limitation the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor Standards Act, the Employment Retirement Security Income Act of 1974, the California Constitution, the California Fair Employment and Housing Act, the California Unfair Competition Act (California Business and Professions Code section 17200 et seq.), and the California Labor Code.

57. Plaintiffs agree that there is a risk that any injury that they may have suffered by reason of the Released Parties' relationship with them might not now be known, and there is a further risk that said injuries, whether known or unknown at the date of this Settlement Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained. Nevertheless, Plaintiffs agree to forever and fully release and discharge the Released Parties, and understand that by the execution of this Settlement

1 Agreement no further claims for any such injuries that existed at the time of the execution of this
2 Settlement Agreement may ever be asserted by Plaintiffs with respect to claims arising in the
3 time period from the beginning of time to the execution of this Settlement Agreement.

4 58. Plaintiffs expressly waive and relinquish all rights and benefits afforded by
5 Section 1542 of the Civil Code of the State of California and do so understanding and
6 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
7 of the State of California states:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
9 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
10 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
11 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
12 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
OR RELEASED PARTY.

13 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
14 full and complete release and discharge of all parties, Class Representatives expressly
15 acknowledge that this Settlement Agreement is intended to include in its effect, without
16 limitation, all claims that Class Representatives knew of, as well as all claims that they do not
17 know or suspect to exist in their favor against the Released Parties, or any of them, for the time
18 period from the beginning of time to the execution of this Settlement Agreement, and that this
19 Settlement Agreement contemplates the extinguishment of any such Class Representatives'
20 Claims. Notwithstanding the above, the general release by Class Representatives shall not extend
21 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
22 that may not be released by law.

23 **G. Interim Stay of Proceedings**

24 59. Pending completion of all of the prerequisites necessary to effectuate this
25 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the
26 Coordinated Action except as is necessary to effectuate the Settlement.

27 **H. Notice Process**

28 60. Appointment of Administrator. The Parties have agreed to the appointment of the

1 Administrator to perform the duties of a settlement administrator, including mailing the Notice,
2 using standard devices to obtain forwarding addresses, independently reviewing and verifying
3 documentation associated with any claims or opt-out requests, resolving any disputes regarding
4 the calculation or application of the formula for determining the Individual Class Payment and
5 Individual PAGA Payments, drafting and mailing the settlement checks to Participating Class
6 Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other
7 tasks as set forth herein or as the Parties mutually agree or that the Court orders.

8 61. Disputes Regarding Administration. All disputes relating to administration of the
9 Settlement by the Administrator (except for disputes regarding Class Data) shall be referred to
10 the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of
11 this Agreement, until Plaintiffs and Defendant notify the Court that all payments and obligations
12 contemplated by this Agreement have been fully carried out. Prior to presenting any issue to the
13 Court, counsel for the Parties will confer in good faith to resolve the dispute without the
14 necessity of Court intervention. The Administrator shall also be responsible for issuing to
15 Plaintiffs, Participating Class Members, and Aggrieved Employees, and Class Counsel any Tax
16 Forms as may be required by law for all amounts paid pursuant to this Agreement.

17 62. Class Data. Within twenty-one (21) days after entry of the Preliminary Approval
18 Order, Defendant shall provide the Class Data to the Administrator. The Administrator will run a
19 check of the Class Members' addresses against those on file with the U.S. Postal Service's
20 National Change of Address List. The Class Data provided to the Administrator will remain
21 confidential and will not be used or disclosed to anyone, except as required by applicable tax
22 authorities, pursuant to Defendant's express written consent, or by order of the Court. Although
23 Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class
24 Counsel from communicating with Class Members regarding the Action and Settlement.

25 63. Total Workweeks. At least 5 days prior to mailing the Notice, the Administrator
26 shall provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary
27 calculation of all payments to be paid from the Settlement Amount, including the estimated
28 Individual Class Payments to each Class Member and Individual PAGA Payments to each

1 Aggrieved Employee (a person's name shall be redacted and a control number used in place of
2 the name). If the total Workweeks worked by all Class Members triggers the Escalator Clause,
3 the Administrator shall notify the Parties of the increased Settlement Amount, and related
4 increased payments from the Settlement Amount, including increased Attorneys' Fees and Costs
5 and any increased Administration Costs, all of which shall be subject to Court approval.

6 64. Notice Packet. The Notice, as approved by the Court, shall be sent by the
7 Administrator to the Class Members, by first class mail, in English, within ten (10) calendar days
8 following the Administrator's receipt of the Class Data. The Administrator shall use standard
9 devices, including a skip trace, to obtain forwarding addresses of Class Members if any
10 envelopes are returned.

11 65. Returned Notices. The Administrator will take steps to ensure that the Notice is
12 received by all Class Members, including utilization of the National Change of Address Database
13 maintained by the United States Postal Service to review the accuracy of and, if possible, update
14 a mailing address. Notices will be re-mailed to any Class Member for whom an updated address
15 is located within ten (10) calendar days following both the Administrator learning of the failed
16 mailing and its receipt of the updated address. The Notice shall be identical to the original
17 Notice, except that it shall notify the Class Member that the exclusion (opt-out) request or
18 objection must be returned by the later of the Response Deadline or fifteen (15) days after the
19 remailing of the Notice.

20 66. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
21 if an envelope has not been returned to Administrator by the Response Deadline that the Class
22 Member received the Notice.

23 67. Disputes Regarding Class Data. Class Members are deemed to participate in the
24 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released
25 PAGA Claims. The Notice will inform Class Members of the estimated Individual Class
26 Payment and Individual PAGA Payment, as well as the number of Workweeks worked during
27 the Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they
28 feel they should be credited with more Weeks Worked in the Class Period and/or PAGA Period

1 in California than Defendant's records show by timely submitting evidence to the Administrator.
2 Defendant's records will be presumed determinative absent reliable evidence to rebut
3 Defendant's records, but the Administrator will evaluate the evidence submitted by the Class
4 Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to
5 meet and confer in good faith about the evidence to determine the Class Member's actual
6 number of Work Weeks and estimated Individual Class Payment and Individual PAGA Payment.
7 If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the
8 Court to render a final decision. Class Members and Aggrieved Employees will have until the
9 Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

10 68. Declaration of Due Diligence. The Administrator shall provide counsel for the
11 Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due
12 diligence and proof of mailing with regard to the mailing of the Notice Packet.

13 69. Class Members' Rights. Each Class Member will be fully advised of the
14 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion
15 from the Class Claims portion of the Settlement. The Notice will inform the Class Members of
16 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
17 in accordance with the following guidelines:

18 (a) Requests for Exclusion from Class. Any Class Member, other than
19 Plaintiffs, may request to be excluded from the Class by submitting a "Request for Exclusion" to
20 the Administrator, postmarked on or before the Response Deadline. The Request for Exclusion
21 should state:

22 "I WISH TO BE EXCLUDED FROM THE CLASS IN THE
23 AMERICAN TIRE LAWSUIT. I UNDERSTAND THAT IF I ASK
24 TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL
25 NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM
26 THIS LAWSUIT."

27 To be valid, any Request for Exclusion must include the full name, address, telephone
28 number, last four digits of the social security number or date of birth, and signature of the Class

1 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
2 Administrator at the specified address set forth in the Notice. Any such Request must be made in
3 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if
4 postmarked by the Response Deadline, unless the Parties otherwise agree in writing. Any Class
5 Member who timely requests exclusion in compliance with these requirements: (i) will not have
6 any rights under this Agreement, including the right to object, appeal or comment on the
7 Settlement; (ii) will not be entitled to receive the Individual Class Payment under this
8 Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Class Member
9 who is an Aggrieved Employee who requests timely exclusion will still be subject to the
10 Released PAGA Claims to the fullest extent permitted by law and receive an Individual PAGA
11 Payment. All Parties and their counsel, including Defendant's respective members, member
12 managers, owners, officers, and directors, shall not encourage or solicit opt-outs or objections,
13 directly or indirectly, through any means.

14 (b) Binding Effect on Participating Class Members. All Participating Class
15 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
16 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
17 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
18 Settlement.

19 (c) Objections to Settlement. Any Class Member, other than Plaintiffs, who
20 does not submit a valid and timely Request for Exclusion may object to the terms of this
21 Agreement. To object, a Class Member shall inform the Administrator, in writing, of his or her
22 objection which must be postmarked by the Response Deadline at the address set forth in the
23 Notice. Such objection shall include the Objecting Class Member's full name, address,
24 telephone number, last four digits of the social security number or date of birth, signature, and
25 dates of employment with Defendant, in addition to the case name and number, the basis for the
26 objection, including any legal support and each specific reason in support of the objection, as
27 well as any documentation or evidence in support thereof, and, if the Objecting Class Member is
28 represented by counsel, the name and address of his or her counsel. The Administrator shall

1 provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days
2 of receipt, and the Administrator shall attach the same to its declaration of due diligence and file
3 with the Court prior to the Final Approval Hearing. An Objecting Class Member remains
4 eligible to receive monetary compensation from the Settlement. Plaintiffs and Defendant shall
5 not be responsible for any fees, costs, or expenses incurred by an Objecting Class Member
6 and/or his or her counsel related to any objections to the Settlement. Submitting an objection
7 does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by
8 becoming a party of record by timely and properly intervening or filing a motion to vacate the
9 judgment under Code of Civil Procedure § 663.

10 (d) Failure to Object. Any Class Member who does not timely and properly
11 become a party of record by intervening or filing a motion to vacate the judgment waives all
12 rights to appeal from the Judgment, including all rights to any post-judgment proceeding and
13 appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion under
14 California Code of Civil Procedure section 473, and extraordinary writs.

15 (e) Responses to Objections. Counsel for the Parties may file a response to
16 any objections submitted by an Objecting Class Member at least five (5) court days before the
17 date of the Final Approval Hearing.

18 (f) Class Members will have until the Response Deadline to object or submit
19 a Request for Exclusion to the Administrator by U.S. Mail. The Administrator shall disclose
20 jointly to Class Counsel and Defense Counsel what objections or Requests for Exclusion were
21 timely submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel.

22 70. Funding of the Settlement Amount. Defendant shall deposit the Settlement
23 Amount, plus Defendant's share of payroll taxes owed on Individual Class Payments, with the
24 Administrator within ten (10) days of the Effective Date.

25 71. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
26 Settlement Amount by Defendant, the Administrator shall mail the Individual Class Payments to
27 the Participating Class Members, the Individual PAGA Payments to the Aggrieved Employees,
28 the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service Payments to

the Class Representatives, the payment to the LWDA for PAGA Penalties, and will pay itself the Administration Costs.

72. Deadline for Cashing Settlement Checks. Participating Class Members and Aggrieved Employees shall have 180 calendar days after mailing by the Administrator to cash their settlement checks. The release will be binding upon all Participating Class Members who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Administrator within 180 days of mailing, the Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual, and notify Defense Counsel and Class Counsel of the results. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class Counsel, Plaintiffs, nor the Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Class Member and/or Aggrieved Employee notifies the Administrator that he or she believes that a settlement check has been lost or stolen, the Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Administrator will issue a replacement check.

(a) If any Participating Class Member's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Class Member.

(b) If any Aggrieved Employee's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Aggrieved Employee.

I. Duties of the Parties Prior to the Court's Approval

73. Promptly after execution of this Agreement, Plaintiffs will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order

1 accomplishing the following:

- 2 (a) Approving as to form and content the proposed Notice;
- 3 (b) Directing the mailing of the Notice by first class mail to the Class
- 4 Members;
- 5 (c) Preliminarily approving this Settlement;
- 6 (d) Preliminarily certifying the class for purposes of this Settlement;
- 7 (e) Advising the LWDA of the proposed Settlement; and
- 8 (f) Scheduling the Final Approval Hearing on the issue of whether this
- 9 Settlement should be finally approved as fair, reasonable and adequate.

10 **J. Duties of the Parties Following Court's Final Approval**

11 74. In connection with the Final Approval Hearing provided for in this Agreement,

12 Class Counsel shall submit a proposed Final Approval Order:

- 13 (a) Approving the Settlement, adjudging the terms thereof to be fair,
- 14 reasonable and adequate, and directing consummation of its terms and provisions;
- 15 (b) Approving Class Counsel's application for an award of attorneys' fees and
- 16 reimbursement of litigation costs and expenses, Service Payments to the Class Representatives,
- 17 and the payment to the Administrator for costs of administering the settlement; and
- 18 (c) Entering judgment approving settlement.

19 **K. Voiding the Agreement**

20 75. If the Court fails or refuses to issue the Final Approval Order or fails to approve

21 any material condition of this Agreement that effects a fundamental change of the Settlement, the

22 entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the

23 option of either Party.

24 76. If the Settlement is voided or fails for any reason, Plaintiffs and Defendant will

25 have no further obligations under the Settlement, including any obligation by Defendant to pay

26 the Settlement Amount, or any amounts that otherwise would have been owed under this

27 Settlement.

28

1 77. If the Settlement is voided or fails for any reason, any costs incurred by the
2 Administrator shall be borne equally by Defendant and Plaintiffs, unless otherwise specified in
3 this Agreement.

4 **L. Other Terms**

5 78. Waiver. The waiver by one Party of any breach of this Agreement by another
6 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

7 79. Parties' Authority. The signatories hereto represent that they are fully authorized
8 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

9 80. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
10 accomplish the terms of this Agreement, including but not limited to, execution of such
11 documents and to take such other action as may reasonably be necessary to implement the terms
12 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
13 contemplated by this Agreement and any other efforts that may become necessary by order of the
14 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
15 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
16 cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's
17 preliminary and final approval of the settlement, and the final entry of judgment.

18 81. Defendant's Right to Withdraw. If the number of valid Requests for Exclusion
19 exceeds 5% of the total Class Members, Defendant may, but is not obligated to, elect to
20 withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement
21 shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any
22 further obligation to perform under this Agreement; provided, however, Defendant shall be
23 responsible to pay all Administration Costs incurred to that point. Defendant must notify Class
24 Counsel and the Court of its election to withdraw not later than fourteen (14) days after the
25 Administrator provides notice that the number of valid Requests for Exclusion exceeds 5% of the
26 total Class Members; late elections will have no effect

27 82. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
28 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,

1 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
2 cause of action or rights released and discharged by this Agreement.

3 83. No Admission. Defendant denies any and all liability to Plaintiffs and/or any
4 Class Member and/or Aggrieved Employee in this Action, as to any and all causes of action that
5 were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to
6 settle and compromise the matters at issue in the Complaint to avoid further substantial expense
7 and the inconvenience and distraction of protracted and burdensome litigation. Defendant has
8 taken into account the uncertainty and risks inherent in litigation, and without conceding any
9 infirmity in the defenses that it has asserted or could assert against Plaintiffs, have determined
10 that it is desirable and beneficial that Plaintiffs' claims be settled in the manner and upon the
11 terms and conditions set forth in this Agreement.

12 84. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
13 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
14 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
15 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
16 Agreement with the intention of avoiding further disputes and litigation with the attendant
17 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
18 related documents such as the notices, and motions for preliminary and final approval, shall,
19 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
20 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
21 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
22 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
23 approved, the stipulation will be of no force or effect.

24 85. No Publicity. The Parties will not publicize the Settlement or disclose it to third
25 parties prior to the Court granting Preliminary Approval, except as required or necessary to
26 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
27 Class Representatives agree that they will not discuss the Settlement with the media, any
28 settlement and verdict reporting service, any social media postings or other Internet postings.

1 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
2 other case materials in the Action related to seeking and obtaining Court approval of this
3 Settlement and the related awards of attorneys' fees and costs, or to communications with Class
4 Members or their representatives about this Settlement, including through the posting of Court-
5 filed documents on Class Counsel's websites for access solely by the Class Members, or to
6 prevent the Parties or their representatives from communicating with financial or legal advisors
7 regarding the Settlement. In response to any media inquiry, Class Counsel may state only that
8 the Action has been settled on terms mutually agreeable to the Parties.

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

13 *To the Class:*

14 Brian J. Mankin
15 *brian@lmlfirm.com*
16 Lauby, Mankin & Lauby LLP
17 5198 Arlington Ave, PMB 513
18 Riverside, CA 92504
19 Tel: (951) 320-1444 | Fax: (951) 320-1445

20 *To Defendant:*

21 Matthew E. Farmer
22 *mfarmer@littler.com*
23 Littler Mendelson, P.C.
24 18565 Jamboree Road, Suite 800
25 Irvine, CA 92612
26 Tel.: (949) 705-3000 | Fax: (949) 724-1201

27 87. Construction. The Parties hereto agree that the terms and conditions of this
28 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
that this Agreement shall not be construed in favor of or against any Party by reason of the extent
to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiffs
and Defendant expressly waive the common-law and statutory rule of construction that

1 ambiguities should be construed against the drafter of an agreement and further agree, covenant,
2 and represent that the language in all parts of this Agreement shall be in all cases construed as a
3 whole, according to its fair meaning.

4 88. Captions and Interpretations. Paragraph titles or captions contained herein are
5 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
6 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
7 contractual and not merely a recital.

8 89. Modification. This Agreement may not be changed, altered, or modified, except
9 in writing and signed by the Parties hereto, and approved by the Court. This Settlement
10 Agreement may not be discharged except by performance in accordance with its terms or by a
11 writing signed by all of the Parties hereto.

12 90. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
13 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
14 provide written notice to the other Party and allow an opportunity to cure the alleged
15 deficiencies, and Plaintiffs and Defendant may agree to seek the help of the Mediator to resolve
16 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
17 own attorneys' fees and costs. This provision shall not apply to any legal action or other
18 proceeding instituted by any person or entity other than Plaintiffs or Defendant.

19 91. Choice of Law. This Settlement Agreement shall be governed by and construed,
20 enforced and administered in accordance with the laws of the State of California, without regard
21 to its conflicts-of-law rules.

22 92. Integration Clause. This Settlement Agreement contains the entire agreement
23 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
24 or contemporaneous agreements, understandings, representations, and statements, whether oral
25 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
26 hereunder may be waived except in writing.
27
28

1 93. Binding On Assigns. This Agreement shall be binding upon and inure to the
2 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
3 successors and assigns.

4 94. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
5 because the members of the Class are numerous, it is impossible or impractical to have each
6 Class Member execute this Agreement. The Notice will advise all Class Members of the binding
7 nature of the release provided herein and such shall have the same force and effect as if this
8 Agreement were executed by each Class Member.

9 95. Counterparts. This Agreement may be executed in counterparts, and when each
10 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
11 original, and, when taken together with other signed counterparts, shall constitute one fully
12 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
13 signatures shall have the same force and effect as an original.

14 96. All Parties With Claims. Class Counsel represents that this settlement covers all
15 individuals they currently represent with claims against Defendant. This term does not otherwise
16 restrict Class Counsel's ability to communicate with clients, consistent with Rules of
17 Professional Conduct.

18
19 -- Signatures on Next Page --

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Dated: March 31, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:



Rafael Martinez

2
3
4
5 Dated: March ___, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

6
7 Germaine Tanner, Sr.

8 Dated: March ___, 2023

**DEFENDANT AMERICAN TIRE
DISTRIBUTORS, INC.**

9
10
11
12 By: _____ (printed name)

13 _____ (title)

14 **APPROVED AS TO FORM:**

15 Dated: March 31, 2023

**CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP**



18 Brian J. Mankin
Attorneys for Plaintiff

19
20 Dated: March ___, 2023

**CLASS COUNSEL
GAINES & GAINES, APLC**

21
22 Daniel F. Gaines, Esq.
Attorneys for Plaintiff

23
24 Dated: March ___, 2023

**DEFENSE COUNSEL
LITTLER MENDELSON, P.C.**

25
26 Matthew E. Farmer, Esq.
Attorneys for Defendant

1 Dated: March __, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

2
3
4 Rafael Martinez

5 Dated: ^{03 / 30 / 2023} March __, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

6
7
8 Germaine Tanner, Sr.

9 Dated: March __, 2023

**DEFENDANT AMERICAN TIRE
DISTRIBUTORS, INC.**

10
11
12 By: _____ (printed name)

13 _____ (title)

14 **APPROVED AS TO FORM:**

15 Dated: March __, 2023

**CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP**

16
17
18 Brian J. Mankin
Attorneys for Plaintiff

19
20 Dated: March 30, 2023

**CLASS COUNSEL
GAINES & GAINES, APLC**

21
22
23 Daniel F. Gaines, Esq.
Attorneys for Plaintiff

24 Dated: March __, 2023

**DEFENSE COUNSEL
LITTLER MENDELSON, P.C.**

25
26
27 Matthew E. Farmer, Esq.
Attorneys for Defendant

EXHIBIT “B”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

American Tire Wage and Hour Cases

Judicial Counsel Coordinated Proceeding No. 5239

Martinez v. American Tire Distributors, Inc., San Bernardino County Case No. CIVSB2133396

Tanner Sr. v. American Tire Distributors, Inc., Fresno County Case No. 22CECG00735

***The San Bernardino County Superior Court authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from a coordinated class action lawsuit (the “Coordinated Action”) against American Tire Distributors, Inc. (“Defendant” or “ATD”) for alleged unpaid wage claims. The Coordinated Action was filed by former ATD employees, and seek payment of (1) unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of a class of nonexempt employees employed by ATD in California during the Class Period (June 16, 2019, through February 6, 2023) (the “Class Members”); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all nonexempt employees employed by ATD in California during the PAGA Period (December 8, 2022, through February 6, 2023) (the “Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring ATD to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring ATD to fund Individual PAGA Payments to Aggrieved Employees and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

[**CLASS MEMBER NAME**] [**ID/CONTROL NUMBER**]

Two Parts	Weeks Worked During: Class Period (Class Member) and PAGA Period (Aggrieved Employee)	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Based on Defendant’s records, and the Parties’ current assumptions, your Individual Class Payment (less withholding) and your Individual PAGA Payment are shown in the chart above, along with the Workweeks you are credited with working during the Class Period and PAGA Period, respectively, according to Defendant’s records. The actual amount you may receive likely will be different and will depend on several factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you did not work during the PAGA Period.)

If you believe that you worked more weeks during either period than Defendant’s records show in the chart above, you can submit a challenge by **DATE**, 2023 (“**Response Deadline**”). See **Section 4** of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do <u>not</u> wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2023 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection stating why you object to the settlement by [REDACTED], 2023 (see Section 7 for details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to dispute your credited Weeks Worked). Defendant’s records will be presumed correct, but you may provide evidence to the Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT’S NOT REQUIRED	
DATE: INSERT DATE, 2023 TIME: 10:00 A.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs and Class Representatives, Rafael Martinez and Germaine Tanner, Sr., are former ATD employees. The Coordinated Action accuses Defendant of violating California labor laws due to the alleged: failure to pay minimum and overtime wages, failure to provide meal periods and rest breaks and failure to pay meal and rest period premiums, failure to timely pay wages each period and upon separation of employment, and failure to provide accurate itemized wage statements. Based on the same claims, Plaintiffs have also asserted claims for civil penalties PAGA. Plaintiffs are represented by attorneys in the Coordinated Action (“Class Counsel”). See Section 9 below for their contact information.

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE COORDINATED ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendant hired an experienced, neutral mediator in an effort to resolve the Coordinated Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Coordinated Action and enforcing the Agreement, Plaintiffs and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant Will Pay \$2,195,000 as the Settlement Amount. Defendant has agreed to deposit the Settlement Amount into an account controlled by the Administrator of the Settlement. The Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsel’s attorneys’ fees and expenses, the Administrator’s Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendant will fund the Settlement not more than 10 days after the Judgment entered by the Court becomes final. The Judgment will be final on the expiration date of the time for filing or noticing any appeal of the Judgment, or a later date if the Judgment is appealed.

2. Court Approved Deductions from Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- A. Up to one-third of the Settlement Amount to Class Counsel for attorneys’ fees (\$731,666.66) and up to \$25,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Coordinated Action without payment.
- B. Up to \$10,000 to each Class Representative as Service Payments for filing the Coordinated Action, working with Class Counsel and representing the Class. The Class Representatives’ Service Payments will be the only monies Plaintiffs will receive other than Plaintiffs’ Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$13,000 to the Administrator for services administering the Settlement.
- D. Up to \$150,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% to Individual PAGA Payments to all Aggrieved Employees, which will be divided based on their share of Weeks Worked during the PAGA Period.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the remainder (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Weeks Worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendant are asking the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages (“Wage Portion”) and 90% to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check are sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion and Objections (if any). The Administrator will also decide any Disputes over weeks worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members' Release. After the Judgment is final and Defendant has fully funded the Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages based on the facts alleged in the Coordinated Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release: All Participating Class Members, on behalf of themselves and their respective representatives, agents, heirs, and assigns, release the Released Parties from all claims alleged or could have been alleged in the Complaint and those based solely upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to failure to timely pay wages upon separation of employment, (f) failure to provide accurate itemized wage statements, (g) unfair and unlawful competition, and (h) all other claims for statutory penalties based on the facts or claims alleged in the Complaint (the “Released Class Claims”). The operative release period for the Released Class Claims is the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

10. Release of Released PAGA Claims. After the Court's judgment is final, and Defendant has paid the Settlement Amount (and separately paid the employer-side payroll taxes), Plaintiffs on behalf of themselves, the State of California and the LWDA shall release the Released Parties from all PAGA claims that Plaintiffs alleged against the Released Parties, on behalf of themselves and the State of California, based on the facts stated in the Complaint and in the LWDA notice letters, including all PAGA claims seeking civil penalties that premised upon (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the Complaint ("Released PAGA Claims.") The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Weeks Worked by each individual Participating Class Member during the Class Period.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$37,500 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked. The number of weeks you worked during the Class Period and PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until **INSERT DATE HERE** ("Response Deadline") to dispute the number of Workweeks credited to you by submitting evidence to the Administrator.

You need to support your dispute by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of weeks worked based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek challenges based on your submission and on input from Class Counsel and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (*i.e.*, every Class Member who does not opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a "Request for Exclusion" letter/card postmarked no later than , 2023 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE CLASS IN THE AMERICAN TIRE LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE

SETTLEMENT CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS
PAYMENT FROM THIS LAWSUIT.”

Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement remain eligible for Individual PAGA Payments.

If you do not want to participate in the Settlement, the Administrator will exclude you based on timely receipt of a writing communicating your request to be excluded. Be sure to personally sign your request, identify the Coordinated Action as *American Tire Wage and Hour Cases*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and last four digits of social security number or your date of birth for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by [REDACTED], 2023 (the “Response Deadline”), or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is [REDACTED], 2023 (the “Response Deadline”).**

If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, and the objection must include your full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendant, in addition to the case name and number (*American Tire Wage and Hour Cases*, Case No. JCCP 5239), the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof. Additionally, if you are represented by an attorney, the objection must include the name and address of your attorney. This objection and all supporting information must be sent to the Administrator at the address listed in Section 9, **postmarked** on or before [REDACTED], 2023.

If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2023, the Court will hold a public hearing in Department S26 of the Superior Court for the State of California, County of San Bernardino, 247 West 3rd Street, San Bernardino, CA 92415 for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel’s applications for attorneys’ fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiffs’ request for the service awards. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other

action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the process to Opt-Out or Object, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you should contact the Administrator for more information or to request that a copy of this Notice be sent to you in the mail.

Settlement Administrator
Name
Mailing Address
Telephone Number

Should you desire any additional information, or if you wish to communicate directly with Class Counsel, you may contact them at the contact information noted here:

Class Counsel	
Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444	Daniel Gaines, Esq. <i>daniel@gaineslawfirm.com</i> Gaines & Gaines, APLC 4550 E. Thousand Oaks Blvd, Suite 100 Westlake Village, CA 91362 Tel: (818) 703-8985

You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on [REDACTED], 2023 and which is available to be inspected at any time during regular business hours at the Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT “C”



December 3, 2021

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

American Tire Distributors, Inc.
12200 Herbert Wayne Court, #150
Huntersville, NC 28078

Re: PAGA Civil Penalty Claim
Rafael Martinez v. American Tire Distributors, Inc..

To the Labor and Workforce Development Agency and American Tire Distributors, Inc.:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Rafael Martinez (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), American Tire Distributors, Inc.. and/or any affiliated entities, as well as its owners (the “Owners”) (collectively, the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately 2006 through May 2021. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Additionally, at all relevant times, Claimant and the Aggrieved Employees were not paid proper overtime wages due to the Company’s failure to pay overtime at the required rate of time and one-half of the regular rate of pay. For example, during his employment, Claimant was compensated at a rate of \$20.29 per hour. However, during these same time periods, the Company only calculated and paid the one-half overtime premium at the rate of \$10.14 per hour. But \$10.14 is not one-half of \$20.29 and, as such, this is a direct violation of California law because it caused an underpayment of wages on every occasion that the Company improperly rounded the overtime premium rate downwards.

Also, at all relevant times, Claimant was compensated on an hourly basis plus and was entitled to and did receive additional nondiscretionary compensation. However, on the occasions when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation

during the pay period, the Company failed to properly include these amounts in the calculations for Claimant's regular rate of pay. Therefore, the Company failed to pay proper overtime wages for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when he was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, and vacation wages. Finally, during his employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of American Tire and the Owners and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that American Tire and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, American Tire and the Owners are an integrated enterprise and should be treated as a single employer because American Tire and the Owners share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, American Tire and the Owners share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that the Owners are now and at all relevant times were the owners of American Tire and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times the Owners had the authority, in the interest of American Tire to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that American Tire and the Owners are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or



ratification of each other. Furthermore, in conducting themselves in the manner described herein, American Tire and the Owners were acting in active concert with one another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges American Tire and the Owners were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, American Tire has been inadequately capitalized to conduct business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which the Owners have conducted their personal affairs. Adherence to the fiction of the separate existence of American Tire would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to American Tire should be imposed jointly and severally against the Owners.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, the Owners are liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company’s failure to accurately record and compensate for all hours worked, the failure to compensate for time spent in mandated temperature checks, and the failure to pay overtime and/or properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

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**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment,



his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours' previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Labor Code § 203(a) states "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a "waiting time penalty." (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state total hours worked (the wage statements failed to accurately reflect total compensable); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates (including the accurate overtime rate); and failure to accurately state the corresponding number of hours worked at each hourly rate. Accordingly, Claimants are entitled to damages under Labor Code § 226(e), including reasonable attorneys' fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199
(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

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ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmlfirm.com



EXHIBIT “D”



March 28, 2023

CASE ASSUMPTIONS

Class Members	1,000
Opt Out Rate	1%
Opt Outs Received	10
Total Class Claimants	990
Subtotal Admin Only	\$13,834.66

Flat Fee Total \$13,000.00

For 1,000 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Case: Martinez v. ATD, Opt-Out Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin

Firm: Lauby, Mankin & Lauby, LLP

Contact Number: (951) 320-1444

Email: brian@lmlfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on 1,000 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Setup*	\$150.00	1	\$150.00
Call Center & Long Distance	\$2.00	180	\$360.00
NCOA (USPS)	\$225.00	1	\$225.00
Total			\$1,135.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Reminder Postcard

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Data Merge & Duplication Scrub	\$0.10	1,000	\$100.00
Notice Packet & Opt-Out Form	\$1.30	1,000	\$1,300.00
Estimated Postage (up to 2 oz.)*	\$0.61	1,000	\$610.00
Static Website	\$100.00	1	\$100.00
Check Cashing Reminder Postcard	\$0.60	208	\$124.74
Postage Included			
Total			\$2,434.74

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	6		\$330.00
Skip Tracing Undeliverables	\$0.85	250		\$212.50
Remail Notice Packets	\$0.75	247		\$185.25
Estimated Postage	\$0.61	247		\$150.67
Programming Undeliverables	\$50.00	1		\$50.00
		Total		\$928.42

Database Programming / Processing Opt-Outs, Deficiencies or Disputes				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	7		\$385.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	16		\$160.00
Case Manager	\$85.00	4		\$340.00
		Total		\$1,385.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	2		\$270.00
Disbursement Review	\$135.00	2		\$270.00
Programming Manager	\$95.00	3		\$285.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	13		\$1,755.00
Mail Class Checks *	\$0.90	990		\$891.00
Estimated Postage	\$0.61	990		\$603.90
		Total		\$4,209.90

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$115.00	3	\$345.00
Remail Checks & Tax Forms (Postage Included)	\$1.70	198	\$336.60
Case Associate	\$55.00	4	\$220.00
Reconcile Uncashed Checks	\$85.00	6	\$510.00
Conclusion Reports	\$115.00	3	\$345.00
Case Manager Conclusion	\$85.00	4	\$340.00
Final Reporting & Declarations	\$115.00	3	\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,000.00	1	\$1,000.00
Check to Cy-Pres	\$150.00	1	Included
Uncashed Checks to the State of California Controllers Office	\$300.00	1	\$300.00
Estimated <u>109</u> Total Class Members			
Total			\$3,741.60

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$13,834.66



CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “E”