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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 – 12-03-21)

*Germaine Tanner Sr., et al. v. American Tire  
Distributors, Inc., et al.*

Case No.: 22CECG00735  
(Fresno County Superior Court – 03-08-22)

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 --

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1 Dated: March 31, 2023

**PLAINTIFF AND CLASS REPRESENTATIVE:**



Rafael Martinez

2  
3  
4  
5 Dated: March \_\_\_, 2023

**PLAINTIFF AND CLASS REPRESENTATIVE:**

6  
7  
8  
9  
10  
11  
12 Germaine Tanner, Sr.

13 Dated: March \_\_\_, 2023

**DEFENDANT AMERICAN TIRE  
DISTRIBUTORS, INC.**

14  
15  
16  
17  
18 By: \_\_\_\_\_ (printed name)

19  
20 \_\_\_\_\_ (title)

**APPROVED AS TO FORM:**

21 Dated: March 31, 2023

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



Brian J. Mankin  
Attorneys for Plaintiff

22 Dated: March \_\_\_, 2023

**CLASS COUNSEL  
GAINES & GAINES, APLC**

23  
24 Daniel F. Gaines, Esq.  
Attorneys for Plaintiff

25 Dated: March \_\_\_, 2023

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

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

1 Dated: March \_\_, 2023

**PLAINTIFF AND CLASS REPRESENTATIVE:**

2  
3  
4 Rafael Martinez

5 Dated: <sup>03 / 30 / 2023</sup> 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