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

JOSE MARTINEZ, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

HIGH DESERT AUTO SUPPLY, INC., a
California corporation; and DOES 1 through 100,
inclusive,

Defendants

Case No.: CIVSB2206780

CLASS ACTION

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

*[Assigned for All Purposes to the Hon.
Joseph T. Ortiz; Dept. S-17]*

Complaint Filed: March 30, 2022

FAC Filed: June 7, 2022

Trial: Not Yet Set

1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement” or
2 “Agreement”) is made and entered into by and between Plaintiff JOSE MARTINEZ (“Plaintiff” or
3 “Class Representative”), individually and on behalf of all putative class members, and Defendant
4 HIGH DESERT AUTO SUPPLY, INC. (“Defendant”). Plaintiff and Defendant are collectively
5 referred to herein as “the Parties.”

6 **I. DEFINITIONS**

7 The following definitions are applicable to this Settlement, in addition to other terms defined
8 elsewhere in this Settlement:

9 1. “Action” shall mean the operative Complaint of the civil action initially commenced
10 on March 30, 2022, filed and maintained by Plaintiff against Defendant in the Superior Court of
11 California, County of San Bernardino, Case No. CIVSB2206780.

12 2. “Class” shall mean all hourly-paid, non-exempt employees who, during either the
13 Class Period, have previously been or currently are employed in California by Defendant, as an
14 hourly-paid, non-exempt employee. “Class Member” shall mean an individual who is a member of
15 the Class (or if any such person is incompetent, deceased, or unavailable due to military service, the
16 person’s legal representative or successor in interest evidenced by reasonable verification).

17 3. “Class Counsel” shall mean the attorneys representing Plaintiff in the Action, Kane
18 Moon, Esq., Allen Feghali, Esq., and Michael Citrin, Esq. of Moon Law Group, PC.

19 4. “Class Counsel Fees Payment” shall mean one-third (1/3) of the Maximum
20 Settlement Amount (currently estimated to be One Hundred and Fifty Thousand Dollars and Zero
21 Cents (\$150,000.00)) subject to approval by the Superior Court as Class Counsel’s attorneys’ fees
22 incurred in connection with the Action, including fees incurred in pre-filing investigation, filing of
23 the Action, and all related litigation activities, this Settlement, and all post-Settlement compliance
24 procedures.

25 5. “Class Counsel Litigation Expenses Payment” shall mean the actual litigation
26 expenses and/or costs expended by Class Counsel subject to approval by the Superior Court
27 incurred in connection with the Action, including pre-filing investigation, filing of the Action, and
28 all related litigation activities, this Settlement, and all post-Settlement compliance procedures. Class

1 Counsel's expenses are not to exceed Twenty-Four Thousand Dollars and Zero Cents (\$24,000.00).

2 6. "Class Notice" shall mean the Notice of Proposed Settlement, Preliminary Approval
3 of Settlement, and Hearing Date for Final Court Approval, a sample of which is attached hereto as
4 Exhibit "A". The Class Notice shall further contain (i) a Class Member's first and last name, (ii)
5 last known address, (iii) the Class Member's Individual Workweeks, (iv) the PAGA Group
6 Member's Individual Pay Periods, if applicable; (v) the Class Member's estimated amount of the
7 Settlement Share; and (vi) the PAGA Group Member's estimated PAGA Payment Share, if
8 applicable. The Class Notice shall also provide the Class Members with instructions on how to opt-
9 out of and/or object to the Settlement.

10 7. "Class Period" shall mean the period of time from March 30, 2018, through March
11 31, 2023.

12 8. "Class Representative Payment" shall mean the special payment made to Plaintiff in
13 his capacity as Class Representative to compensate him for prosecuting the Action, and performing
14 work in support of the Action, in the amount of Seven Thousand, Five Hundred Dollars and Zero
15 Cents (\$7,500.00), subject to approval by the Superior Court.

16 9. "Defense Counsel" shall mean the attorneys representing Defendant in the Action,
17 Matthew C. Sgnilek, Esq. and Andrea Rosenkranz, Esq. of O'Hagan Meyer.

18 10. "Effective Date" shall mean the first business day following the last of the following
19 occurrences: (i) if no Class Member both objects and also files either a timely motion to intervene
20 and/or timely motion to vacate the judgment, then forty-five (45) days following the date the Court
21 enters an order granting Final Approval of the Settlement; (ii) if a Class Member both objects and
22 either files a timely motion to intervene or timely motion to vacate the judgment, then sixty-one
23 (61) days following the date the Court enters an order granting final approval, assuming no appeal is
24 filed; or (iii) if a Class Member both objects and also files a timely motion to intervene or files a
25 motion to vacate the Judgment and also files a timely appeal, then the date of final resolution of that
26 appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final and
27 complete judicial approval of the Settlement in its entirety, with no further challenge to the
28 Settlement being possible. The occurrence of the Effective Date is a prerequisite to any obligation

1 of Defendant to pay any funds into the Settlement Account.

2 11. "Employer's Payroll Taxes" shall mean Defendant's share of all payroll taxes
3 payable to any and all government agencies incurred for any payments of Settlement Shares to
4 Participating Class Members pursuant to this Settlement. Defendant's payment of the normal
5 employer's share of payroll taxes will be made separately and shall not come from the Maximum
6 Settlement Amount.

7 12. "Final Approval Hearing" shall mean the hearing to be conducted by the Superior
8 Court to determine whether to finally approve and implement the terms of this Settlement.

9 13. "Individual Pay Periods" shall mean the number of Pay Periods for an individual
10 PAGA Group Member.

11 14. "Individual Workweeks" shall mean the number of Workweeks for an individual
12 Class Member.

13 15. "Judgment" shall mean the Order of Final Judgment entered by the Superior Court
14 that the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
15 this Action.

16 16. "LWDA Payment" shall mean the payment to the California Labor and Workforce
17 Development Agency ("LWDA") constituting seventy-five percent (75%) of the value assigned to
18 the claim for penalties under the California Labor Code Private Attorneys General Act, California
19 Labor Code Section 2698, *et seq.* ("PAGA"). Specifically, Twenty-Two Thousand, Five Hundred
20 Dollars and Zero Cents (\$22,500.00), which shall constitute the LWDA's seventy-five percent
21 (75%) share of Thirty Thousand Dollars and Zero Cents (\$30,000.00) in civil penalties paid under
22 this Settlement. The remaining Seven Thousand, Five Hundred Dollars and Zero Cents
23 (\$7,500.00) in civil penalties shall be distributed on a *pro rata* basis based upon the number of pay
24 periods worked by each PAGA Group Member ("PAGA Payment").

25 17. "Maximum Settlement Amount" shall mean the maximum settlement amount of
26 Four Hundred and Fifty Thousand Dollars and Zero Cents (\$450,000.00) payable by Defendant as
27 provided by this Agreement, unless that amount is increased pursuant to Paragraph 18 below,
28 exclusive of the normal employer's share of any payroll taxes attributable to the Settlement Share

1 payments allocated to wages. Defendant's payment of the normal employer's share of payroll taxes
2 will be made separately, according to each Defendant's agreed upon proportionate share of the
3 Maximum Settlement Amount, and shall not come from the Maximum Settlement Amount.

4 18. Defendant represents that as of March 15, 2023, the number of workweeks
5 worked by Class Members during the Class Period is approximately 11,423. If it is determined
6 that the workweeks through March 31, 2023, exceeds 12,566 (11,423 plus 10% of 11,423), then
7 Defendant shall have the option of either (i) increasing the Net Settlement Amount by an
8 amount determined by the following formula: $[(\text{Actual Number of Workweeks} - 12,566) \div$
9 $12,566] \times \text{Net Settlement Amount}$; or (ii) changing the end date of the Class Period (and PAGA
10 Period) to a date for which there are no more than 12,566 workweeks.

11 19. "Net Settlement Amount" shall mean the Maximum Settlement Amount, less (i) the
12 Class Representative Payment approved by the Superior Court; (ii) the Class Counsel Fees Payment
13 approved by the Superior Court; (iii) the Class Counsel Litigation Expenses Payment approved by
14 the Superior Court; (iv) the LWDA Payment approved by the Superior Court; (v) the PAGA
15 Payment approved by the Superior Court; (vi) the Settlement Administrator Payment approved by
16 the Superior Court; and (vii) any other fees or expenses (other than Class Counsel Fees Payment
17 and Class Counsel Litigation Expenses Payment) incurred in implementing the terms and conditions
18 of this Agreement as approved by the Superior Court.

19 20. "Non-Participating Class Member" shall mean a Class Member who submits a
20 complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions
21 provided in the Class Notice.

22 21. "PAGA Group" mean all hourly-paid, non-exempt employees who, during the
23 PAGA Period, have previously been or currently are employed in California by Defendant. "PAGA
24 Group Member" shall mean an individual who is a member of the PAGA Group (or if any such
25 person is incompetent, deceased, or unavailable due to military service, the person's legal
26 representative or successor in interest evidenced by reasonable verification).

27 22. "PAGA Payment Share" shall mean the value of each PAGA Group Member's share
28 of the PAGA Payment as provided by this Agreement.

23. "PAGA Period" shall mean the period of time from March 30, 2021, through March 31, 2023.

24. "Participating Class Member" shall mean all Class Members who have not submitted a complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions provided in the Class Notice.

25. "Pay Period" shall mean any pay period in which a Class Member actually received payment from Defendant as an hourly-paid, non-exempt employee.

26. "Preliminary Approval" shall mean the Superior Court's preliminary approval of the Settlement without material change that the Parties anticipate will be made following submission of this Agreement to the Court.

27. "Settlement Administrator" shall mean Phoenix Settlement Administrators proposed by the Parties and appointed by the Superior Court to administer the Settlement.

28. "Settlement Administrator Payment" shall mean the payment to the Settlement Administrator for its fees and expenses in administering this Settlement.

29. "Settlement Share" shall mean the value of each Participating Class Member's share of the Net Settlement Amount as provided by this Agreement.

30. "Superior Court" shall mean the Superior Court of California for the County of San Bernardino.

31. "Workweek" shall mean any week in which a Class Member actually performed paid work for Defendant during the Class Period as an hourly-paid, non-exempt employee.

II. RECITALS

32. On March 29, 2022, Class Counsel, on behalf of Plaintiff and the PAGA Group, gave written notice to the Labor Workforce and Development Agency ("LWDA") of the Labor Code violations Defendant are alleged to have violated ("LWDA Exhaustion Letter").

33. On March 30, 2022, Plaintiff filed a Class Action Complaint against Defendant in the San Bernardino County Superior Court, Case No. CIVSB2206780. In his Complaint, Plaintiff pled causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods or Pay Meal Period Premiums; (4) Failure to Provide Rest

1 Breaks or Pay Rest Break Premiums; (5) Failure to Indemnify Necessary Business Expenses; (6)
2 Failure to Timely Pay Final Wages; (7) Failure to Provide Accurate Itemized Wage Statements; and
3 (8) Unfair Business Practices.

4 34. On June 7, 2022, Plaintiff amended his Complaint to add a ninth cause of action for
5 Civil Penalties pursuant to PAGA.

6 35. Defendant denies and continues to deny all of Plaintiff's material allegations.
7 Specifically, Defendant contend (1) it did not fail to pay the Class the minimum, straight time,
8 regular rate, and/or overtime wages; (2) it paid the Class for all hours worked; (3) it provided the
9 Class with all meal periods according to law; (4) it provided the Class with all rest periods
10 according to law; (5) it did not fail to timely pay the Class wages due and owing during
11 employment and/or upon separation; (6) it provided the Class with accurate itemized wage
12 statements, consistent with Labor Code Section 226; (7) it properly maintained all payroll records;
13 (8) it reimbursed employees for all necessary business expenses; (9) it did not violate Business &
14 Professions Code Section 17200, *et seq.*; (10) the PAGA Group is not entitled to penalties under
15 PAGA; and (11) Defendant is not liable for damages, including unpaid wages, liquidated damages,
16 statutory penalties, attorneys' fees, or costs of litigation to the Class.

17 36. In connection with the Action, and in order to work toward a mediated resolution
18 without the time and expense of formal discovery, the Parties produced voluminous documents and
19 data (including, by Defendant, human resources documents and policies, time records, and payroll
20 data during the Class Period) which were reviewed, investigated, and analyzed by Class Counsel.

21 37. On March 16, 2023, the Parties in Action participated in a full day of mediation
22 before an experienced employment and class action mediator, Steve Rottman, Esq. (the
23 "Mediation") and the Parties reached a settlement at the Maximum Settlement Amount.

24 38. The Settlement described in this Agreement represents a compromise and settlement
25 of highly disputed claims. Nothing in this Settlement is intended or will be construed as an
26 admission by Defendant that Plaintiff's claims in the Action have any merit or that they have any
27 liability to Plaintiff, the Class, the PAGA Group or the State on those claims, or as an admission by
28 Plaintiff that Defendant's defenses in Action have any merit. This Settlement is intended to fully,

1 finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to
2 the terms and conditions set forth in this Settlement.

3 39. Based on its own thorough, independent investigation and evaluation of this case,
4 Class Counsel is of the opinion that the Settlement of this Action with Defendant for the
5 consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the
6 best interest of the Class in light of all known facts and circumstances, including the risk of
7 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by
8 Defendant including the risks of adverse determinations on the merits and numerous potential
9 appellate issues. Although Defendant contend that they have no liability in the Action, Defense
10 Counsel shares Class Counsel's belief that the Settlement represents a fair and adequate settlement
11 given the respective risks associated with the case.

12 40. Based on the foregoing Recitals, the Parties agree as follows:

13 **III. PROCEDURE FOR APPROVING SETTLEMENT**

14 41. **Motion for Preliminary Approval of Settlement by the Superior Court.** Plaintiff
15 will move the Superior Court for an order granting Preliminary Approval of the Settlement, setting
16 a date for the Final Approval Hearing no earlier than 120 days from the date of the order granting
17 Preliminary Approval of the Settlement, and approving the Class Notice (attached as Exhibit "A" to
18 this Stipulation) ("Motion for Preliminary Approval"). Any unresolved disagreement among the
19 Parties concerning the Class Notice or other documents necessary to implement the Settlement will
20 be referred first to Steve Rottman, Esq., and if no resolution is reached, then to the Superior Court.

21 42. At the hearing on the Motion for Preliminary Approval, the Parties anticipate that
22 they will jointly appear, support the granting of the Motion for Preliminary Approval, and obtain an
23 order granting Preliminary Approval, granting approval of the Class Notice, and setting a date for
24 the Final Approval Hearing no earlier than 120 days from the date of the order granting Preliminary
25 Approval.

26 43. Should the Superior Court require any amendments to this Agreement or the Motion
27 for Preliminary Approval, the Parties agree to work jointly to resolve any issues in order to secure
28 the Superior Court's Preliminary Approval.

1 44. Should the Superior Court decline to preliminarily approve any material aspects of
2 the Settlement, the Settlement will be null and void and the Parties will have no further obligations
3 under it. In such event, the Parties shall be returned to their respective positions as of the date and
4 time immediately prior to the execution of this Agreement, and the Parties shall proceed in all
5 respects as if this Agreement had not been executed.

6 45. **Class Notice.** After the Superior Court enters its order granting Preliminary
7 Approval, every Class Member will be provided with the Class Notice (in English and Spanish)
8 which will include the Class Notice completed to reflect the order granting Preliminary Approval of
9 the Settlement and the Class Member's information as follows:

10 (a) Within fourteen (14) days after the Motion for Preliminary Approval is
11 granted, Defendant will provide to the Settlement Administrator the "Class Members' Data," which
12 shall consist of an electronic database containing (i) each Class Member's first and last name, (ii)
13 last known mailing address, (iii) the Class Member's Social Security number or Tax ID, (iv) the
14 Class Member's total number of Individual Workweeks, and (v) the Class/PAGA Group Members'
15 total number of Individual Pay Periods, if applicable. If any or all of the Class Members' Data are
16 unavailable to Defendant, Defendant will so inform Class Counsel prior to the date on which
17 Defendant are required to submit the Class Members' Data to the Settlement Administrator and the
18 Parties will make their best efforts to reconstruct or otherwise agree upon the Class Members' Data
19 prior to when it must be submitted to the Settlement Administrator. If the Parties are unable to
20 agree, the dispute will be resolved by the Settlement Administrator as provided in Paragraph 48.
21 This information will otherwise remain confidential and will not be disclosed to anyone, except as
22 required to applicable taxing authorities, as required to carry out the reasonable efforts to identify
23 Class Member information as described in Paragraph 45(c), pursuant to Defendant's express written
24 authorization, or by order of the Superior Court.

25 (b) Within seven (7) days after receiving the Class Members' Data, or as soon
26 thereafter as it is able to do so, the Settlement Administrator will mail the Class Notice to all
27 identified Class Members via first-class U.S. Mail using the mailing address information provided
28 by Defendant, unless modified by any updated address information that the Settlement

1 Administrator obtains in the course of administration of the Settlement.

2 (c) If a Class Notice is returned by the U.S. Postal Service because of an
3 incorrect address, the Settlement Administrator will promptly, and not later than five (5) days from
4 receipt of the returned packet, search for a more current address for the Class Member and re-mail
5 the Class Notice to the Class Member. The Settlement Administrator will use the Class Members'
6 Data and otherwise work with Defense Counsel or utilize its own resources such as skip traces to
7 find a more current address. The Settlement Administrator will be responsible for taking reasonable
8 steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing
9 address of any Class Member for whom a Class Notice is returned by the U.S. Postal Service.
10 These reasonable steps shall include the tracking of all undelivered mail; performing address
11 searches for all mail returned without a forwarding address; and promptly re-mailing to Class
12 Members for whom new addresses are found. Any such Class Members who failed to receive a
13 Class Notice, or who were subject to a re-mailing of the Class Notice as described herein shall be
14 given an additional fourteen (14) days to opt out or object to the Settlement.

15 (d) The Settlement Administrator will inform Class Counsel and Defense
16 Counsel of the number of returned Class Notices it receives and Class Notices re-mailed in a
17 weekly status report.

18 (e) Not later than sixteen (16) court days prior to the Final Approval Hearing, the
19 Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its
20 compliance with its obligations under this Settlement. The declaration will be filed with the papers
21 submitted with the Motion for Final Approval. Prior to the Final Approval Hearing, the Settlement
22 Administrator will supplement its declaration of due diligence if any material changes occur from
23 the date of the filing of its prior declaration.

24 46. **Participating Class Members; Requests for Exclusion from Class Settlement;**
25 **and Objections to Settlement.** Class Members may submit requests to be excluded from the effect
26 of the Settlement; or objections to the Settlement, pursuant to the following procedures:

27 (a) **Participating Class Members.** Each Class Member shall be deemed to be a
28 Participating Class Member unless they submit a complete, timely, and valid request to be excluded

1 from the effect of the Settlement as provided below. All Participating Class Members shall be
2 bound by the provisions and releases contained in this Settlement.

3 (b) **Request for Exclusion from Settlement.** Class Members who wish to
4 exclude themselves from the Settlement (“opt out” of the Settlement) must submit to the Settlement
5 Administrator, not later than forty-five (45) days after the date that the Settlement Administrator
6 first mails the Class Notices, an Exclusion Request (“the Exclusion Period”). Exclusion Requests
7 may be submitted to the Settlement Administrator via U.S. Mail (or similar method), fax, or e-mail.
8 Class Members must complete, sign, date, and timely return an Exclusion Request to the Settlement
9 Administrator to exclude themselves from the Settlement, setting forth their (i) name, (ii) address,
10 and (iii) the following statement or a similar statement: “I wish to exclude myself from the
11 settlement reached in the matter of *Martinez v. High Desert Auto Supply, Inc.* I understand that by
12 excluding myself, I will not receive any money from the settlement reached in this matter.” A Class
13 Member who does not complete and submit a valid and timely Exclusion Request in the manner and
14 by the conclusion of the Exclusion Period will remain a Participating Class Member and, if the
15 Court approves the Settlement, will be bound by all terms and conditions of the Settlement and by
16 the Judgment. A Class Member who timely submits a valid Exclusion Request will not participate
17 in, or be bound by, the Settlement of the Judgment and will not receive any payment pursuant to the
18 Settlement except for a payment from the portion of the PAGA Payment to the PAGA Group if the
19 Class Member is a PAGA Group Member, and will not be bound by the terms of the Settlement,
20 except for the release of the PAGA Group Released Claims if the Class Member is a PAGA Group
21 Member, and will not have any right to object, appeal, or comment thereon. To be valid, Exclusion
22 Requests must be completed in full, signed, and returned to the Settlement Administrator before the
23 expiration of the Exclusion Period. Non-Participating Class Members will not be permitted to file
24 objections to the Settlement and/or appear at the Final Approval Hearing to voice any objections to
25 the Settlement. Members of the PAGA Group cannot seek to exclude themselves from the
26 Settlement of the PAGA claim, but retain all rights to exclude themselves from the Class Settlement
27 as delineated herein. The Settlement Administrator will provide Class Counsel, Defense Counsel,
28 and the Superior Court with only the names of the Non-Participating Class Members.

1 (c) **Objections to Settlement.** The Class Notice will provide that any Class
2 Member who does not request exclusion from the Settlement and who wishes to object to the
3 Settlement must serve on the Settlement Administrator, not later than forty-five (45) days after the
4 Settlement Administrator initially mails the Class Notice, a written objection to the Settlement
5 which sets forth the grounds for the objection and the other information required by Paragraph
6 46(d). The objection must be served as follows:

7 *Martinez v. High Desert Auto Supply, Inc.*

8 c/o _____

9 _____

10 _____

11
12 (d) The written objection must state the Class Member's (i) name, (ii) address,
13 (iii) the dates of the Class Member's employment with Defendant, (iv) the basis for each objection
14 in clear and concise terms, and (v) whether the Class Member intends to appear and object at the
15 Final Approval Hearing. A Class Member who does not serve a written objection in the manner
16 and by the deadline specified may appear at the Final Approval Hearing to state their objection to
17 the Settlement. If a Class Member fails to submit a written objection or to appear at the Final
18 Approval hearing to make an oral objection, the Class Member will be deemed to have waived all
19 objections and will be foreclosed from making any objections – whether by appeal or otherwise – to
20 the Settlement.

21 (e) If a Class Member submits both a Request for Exclusion and a written
22 objection, the Settlement Administrator shall attempt to contact and determine whether the Class
23 Member would like to withdraw either the Request for Exclusion or the objection. If the Class
24 Member does not withdraw the Request for Exclusion or if the Settlement Administrator cannot
25 contact a Class Member who submits both a Request for Exclusion and an objection, the Request
26 for Exclusion shall be valid and it shall be presumed that the Class Member does not wish to
27 participate in the Settlement.

28 (f) If the Superior Court rejects the Class Member's objection, or if the Superior

1 Court approves the settlement despite any objections, the Class Member will be deemed to be a
2 Participating Class Member and will be bound by the terms of this Settlement.

3 (g) A Class Member who timely submits a valid Exclusion Request will not
4 participate in, or be bound by, the Settlement of the Judgment and will not receive any payment
5 pursuant to the Settlement except for a payment from the portion of the PAGA Payment to the
6 PAGA Group if the Class Member is a PAGA Group Member, and will not be bound by the terms
7 of the Settlement and Judgment, except for the release of the PAGA Group Released Claims if the
8 Class Member is a PAGA Group Member, and will not have any right to object, appeal, or
9 comment thereon.

10 47. **Report.** Not later than seven (7) days after the deadline for submission of requests
11 to be excluded and/or objections, the Settlement Administrator will provide each Defendant,
12 through its respective Defense Counsel, with a complete and accurate list of names for all
13 Participating Class Members, all Non-Participating Class Members, all PAGA Group Members, and
14 all Class Members who objected to the settlement. The report shall also be accompanied by an
15 itemized calculation of the Settlement Shares for each Participating Class Member. The Settlement
16 Administrator shall also provide both Parties with a report identifying the number of Participating
17 Class Members, the number of Non-Participating Class Members, the number of PAGA Group
18 Members, and the number of Class Members who submitted a valid, timely, and complete
19 objection. Class Counsel shall also receive a list of Class Members who object to the Settlement.

20 48. **Resolution of Class Member and PAGA Group Member Disputes.** If a Class
21 Member and/or PAGA Group Member disputes the number of his or her Individual Workweeks
22 and/or Individual Pay Periods stated in their Class Notice, the Class Member and/or PAGA Group
23 Member must, within forty-five (45) days after the Settlement Administrator initially mails the
24 Class Notice, ask the Settlement Administrator to resolve the matter by returning the Class Notice
25 with a statement of the number of Workweeks and/or Pay Periods that he or she contends were
26 worked and include any documentation the Class Member and/or PAGA Group Member has to
27 support their contention. The Settlement Administrator shall notify Defendant of the dispute and
28 provide them with a copy of the Class Notice and any documentation received in support of the

1 dispute within three (3) court days of receipt thereof. Defendant shall review their payroll and
2 personnel records and verify the correct number of Workweeks and/or Pay Periods within five (5)
3 court days of the Settlement Administrator's notification. Defendant's records will have a
4 rebuttable presumption of accuracy. After consultation with Class Counsel, Defense Counsel, and
5 the applicable Class Member and/or PAGA Group Member, the Settlement Administrator will,
6 within three (3) court days of Defendant's verification, make a determination of the Class Member's
7 and/or PAGA Group Member's number of Workweeks and/or Pay Periods and that determination
8 will be final, binding on the Parties and the Class Member and/or PAGA Group Member, and is not
9 appealable.

10 **49. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
11 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member to
12 exclude him or herself from the Settlement, object to the Settlement, and/or appeal from the
13 Judgment. If ten percent (10%) or more of the Class Members submit a complete, valid, and timely
14 request to be excluded from the Settlement and are deemed to be Non-Participating Class Members,
15 then Defendant shall have the unilateral right to void this Settlement. Defendant may do so by
16 giving notice to Plaintiff and the Court of its election to void the Settlement not later than fourteen
17 (14) days after the Settlement Administrator issues its report identifying the number of Participating
18 Class Members, the number of Non-Participating Class Members, and the number of Class
19 Members who objected to the settlement as described in Paragraph 46(c). Notwithstanding any
20 other provisions in this Settlement, no sums shall be payable by Defendant in the event that this
21 Settlement is voided as provided for herein.

22 **50. Additional Briefing and Final Approval.**

23 (a) Not later than sixteen (16) court days before the Final Approval Hearing, the
24 Plaintiff will prepare and file with the Superior Court a Motion for Final Approval of the
25 Settlement, including payment of the Class Representative Payment, Class Counsel's Fees Payment,
26 Class Counsel's Litigation Expenses Payment, the Settlement Administrator's Payment, and a
27 memorandum in support of their motion ("Motion for Final Approval"). Absent the escalator
28 provisions outlined in Paragraph 18, if applicable, Plaintiff will not seek additional fees from

1 Defendant or an increase in the Maximum Settlement Amount as part of the Motion for awards of
2 the Class Representative Payment, Class Counsel Fees Payment, and the Class Counsel Litigation
3 Expenses Payment.

4 (b) Not later than five (5) court days before the Final Approval Hearing, the
5 Parties shall be entitled to file and serve a response to any Class Member's objection to the
6 Settlement and/or reply in support of their Motion for Final Approval, to the extent that any
7 opposition to said Motion is filed.

8 (c) If the Superior Court ultimately does not grant final approval of the
9 Settlement or grants final approval conditioned on any material change to the Settlement that is not
10 agreed to by one of the Parties, then any Party will have the right to void the Settlement. If the
11 Settlement is voided in this manner, the Parties will have no further obligations under the
12 Settlement, including any obligation by Defendant to pay any amounts that otherwise would have
13 been payable under this Settlement, except that the voiding Party will pay the Settlement
14 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
15 right to void the Settlement under this Paragraph. An award by the Superior Court of a lesser
16 amount than that sought by Plaintiff and Class Counsel for the Class Representative Payment, the
17 Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and/or the
18 Settlement Administrator's Payment, will not constitute a material change to the Settlement within
19 the meaning of this Paragraph.

20 (d) Upon final approval of the Settlement by the Superior Court at or after the
21 Final Approval Hearing, the Parties will present for the Superior Court's approval and entry a
22 Proposed Final Order and Judgment. The entry of the Final Order and Judgment shall permanently
23 bar all Participating Class Members from prosecuting against Defendant any claims or causes of
24 action of any kind up through the date of Final Approval, which were or could have been brought in
25 this Action, whether known or unknown, as well as all claims as set forth in the Release contained
26 in Section V of this Agreement.

27 (e) After entry of the Judgment, the Superior Court will have continuing
28 jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Settlement,

(ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

51. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Settlement, Plaintiff, Participating Class Members, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary writ, and the Judgment therefore will become non-appealable by them at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment, consistent with the terms of this Settlement, becomes Final.

52. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, writ, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then either Party will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Superior Court, not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes final. A vacation, reversal, or modification of the Superior Court's award of the Class Representative Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and/or the Settlement Administrator's Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this Paragraph.

53. **Establishment of Settlement Account.** The Settlement Administrator shall establish a Settlement Account within ten (10) days of the Effective Date and notify the Parties when the Settlement Account has been established. The Settlement Administrator shall also

1 provide Defendant with an itemized statement for the total amount to be deposited into the
2 Settlement Account, which shall equal the Maximum Settlement Amount (“Settlement Account
3 Deposit”). Within ten (10) days after receiving notification of the Settlement Account and
4 statement for the Settlement Account Deposit, Defendant shall pay into the Settlement Account an
5 amount equal to the Settlement Account Deposit. Defendant shall have no obligation to pay any
6 additional funds into the Settlement Account.

7 **54. Payment of Settlement Shares.** The Settlement Administrator shall pay to each
8 Participating Class Member his or her Settlement Share from the Settlement Account. The
9 Settlement Administrator shall pay each Settlement Share by sending a check in the appropriate
10 amount after withholdings to the Participating Class Member at the address indicated in the Class
11 Member’s Data. Such payment shall be sent by the Settlement Administrator via U.S. Mail within
12 fourteen (14) days of its receipt of the Settlement Account Deposit from Defendant.

13 **55. Payment of PAGA Payment Shares.** The Settlement Administrator shall pay to
14 each PAGA Group Member his or her PAGA Payment Share from the Settlement Account. The
15 Settlement Administrator shall pay each PAGA Payment Share by sending a check in the
16 appropriate amount to the PAGA Group Member at the address indicated in the PAGA Group
17 Member’s Data. Such payment shall be sent by the Settlement Administrator via U.S. Mail within
18 fourteen (14) days of its receipt of the Settlement Account Deposit from Defendant.

19 **56. Uncashed Settlement Share and PAGA Payment Share Checks.** Any checks
20 paid to Participating Class Members and/or PAGA Group Members shall be negotiable for one
21 hundred and eighty (180) calendar days from the date of their issuance. A Participating Class
22 Member must cash his or her Settlement Share check within one hundred and eighty (180) calendar
23 days after it is mailed to him or her. A PAGA Group Member must cash his or her PAGA Payment
24 Share check within one hundred and eighty (180) calendar days after it is mailed to him or her. If a
25 check remains uncashed after one hundred and eighty (180) calendar days from the initial mailing,
26 or if a check is returned to the Settlement Administrator as undeliverable during the one hundred
27 eighty-day period, the Settlement Administrator shall take all reasonable efforts to identify the
28 Participating Class Member’s and/or PAGA Group Member’s correct address, including the

performance of a “skip-trace.” If an updated address can be identified, the Settlement Administrator shall issue another check to the Participating Class Member and/or PAGA Group Member and mail it to the Participating Class Member and/or PAGA Group Member at his or her updated address. If an updated address for the Participating Class Member and/or PAGA Group Member cannot be identified, if a reissued check is once again returned to the Settlement Administrator as undeliverable, or if the reissued check remains uncashed after one hundred eighty (180) calendar days, the Settlement Administrator will keep an accounting of such funds and shall give notice to the Parties of the total balance of uncashed Settlement Shares and/or PAGA Payment Shares. A Participating Class Member who fails to negotiate or receive their Settlement Share check despite the procedures described above shall nevertheless remain bound by the Settlement and the releases contained herein. A PAGA Group Member who fails to negotiate or receive their PAGA Payment Share check despite the procedures described above shall nevertheless remain bound by the Settlement and the releases contained herein.

57. The funds represented by Settlement Share and/or PAGA Payment Share checks remaining uncashed for more than one hundred and eighty (180) calendar days after issuance shall be voided and then shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, *et seq.*, in the names of those Participating Class Members and/or PAGA Group Members who did not cash their checks until such time they claim their property. The Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Participating Class Members, whether or not they all cash their settlement checks.

58. **Final Report by Settlement Administrator to Superior Court.** Within ten (10) days after final disbursement of all funds from the Settlement Account, the Settlement Administrator will serve on the Parties and file with the Superior Court a declaration providing a final summary report on the disbursements of all funds from the Settlement Account. Within ten (10) days after transmission of any remaining unclaimed funds to Controller of the State of California the Settlement Administrator will serve on the Parties and file with the Superior Court a declaration providing a final summary report on the transmission of any remaining unclaimed funds

1 to Controller of the State of California as outlined Paragraph 57.

2 **IV. SETTLEMENT TERMS AND CONDITIONS**

3 59. **Conditional Certification for Settlement Purposes.** Solely for the purposes of
4 effectuating this Settlement, and subject to Court approval, the Parties hereby stipulate to the
5 conditional certification of the following Settlement Class: “all hourly-paid, non-exempt employees
6 who, during either the Class Period, have previously been or currently are employed in California
7 by Defendant, as an hourly-paid, non-exempt employee.” The Parties agree that if for any reason
8 the Settlement is not preliminarily and/or finally approved, the conditional certification of the
9 Settlement Class will be of no force or effect, does not constitute an admission by Defendant that
10 class certification is proper, and will not be deemed admissible in this or any other proceeding, and
11 that the Parties will litigate the issue of class certification.

12 60. **Settlement Shares.** Subject to the terms and conditions of this Settlement, the
13 Settlement Administrator will calculate the Settlement Shares for each Class Member within ten
14 (10) days after Defendant provide the Settlement Administrator with the Class Members’ Data. The
15 Settlement Share for each Class Member will be calculated as follows, understanding that the
16 formulas below do not constitute an admission by either Party, and are intended only to provide a
17 practical means to simplify and administer the claims process:

18 (a) **Number of Class Members and Workweeks.** Defendant shall determine
19 the total number of Class Members and the aggregate number of Workweeks for those Class
20 Members as of the time of Preliminary Approval. This information shall be provided to the
21 Settlement Administrator along with the Class Members’ Data as described in Paragraph 45(a)
22 above.

23 (b) **Calculation of the Workweek Value.** The Settlement Administrator shall
24 determine the value of a Workweek (“Workweek Value”) by taking the Net Settlement Amount and
25 dividing it by the sum of all Class Members’ Workweeks who do not opt out of the Settlement.

26 (c) **Calculation of Settlement Shares.** The Settlement Administrator shall
27 assign to each Participating Class Member a Settlement Share which shall be equal to the
28 Workweek Value multiplied by each Participating Class Member’s Individual Workweeks. Upon

1 calculation of the Participating Class Members' Settlement Shares, the Settlement Administrator
2 shall furnish to Class Counsel and Defense Counsel a worksheet containing a list of employee
3 identification numbers for the Class Members with their corresponding Individual Workweeks and
4 Settlement Shares.

5 **61. PAGA Payment Shares.** Subject to the terms and conditions of this Settlement, the
6 Settlement Administrator will calculate the PAGA Payment Shares for each PAGA Group Member
7 within ten (10) days after Defendant provide the Settlement Administrator with the PAGA Group
8 Members' Data. The PAGA Payment Share for each PAGA Group Member will be calculated as
9 follows, understanding that the formulas below do not constitute an admission by either Party, and
10 are intended only to provide a practical means to simplify and administer the claims process:

11 **(a) Number of PAGA Group Members and Pay Periods.** Defendant shall
12 determine the total number of PAGA Group Members and the aggregate number of Pay Periods for
13 those PAGA Group Members as of the time of Preliminary Approval. This information shall be
14 provided to the Settlement Administrator along with the Class Members' Data as described in
15 Paragraph 45(a) above.

16 **(b) Calculation of the Pay Period Value.** The Settlement Administrator shall
17 determine the value of a Pay Period ("Pay Period Value") by taking the PAGA Payment amount
18 and dividing it by the sum of all PAGA Group Members' Pay Periods.

19 **(c) Calculation of PAGA Payment Shares.** The Settlement Administrator shall
20 assign to each PAGA Group Member a PAGA Payment Share which shall be equal to the Pay
21 Period Value multiplied by each PAGA Group Member's Individual Pay Periods. Upon calculation
22 of the PAGA Group Members' PAGA Payment Shares, the Settlement Administrator shall furnish
23 to Class Counsel and Defense Counsel a worksheet containing a list of employee identification
24 numbers for the PAGA Group Members with their corresponding Individual Pay Periods and
25 PAGA Payment Shares.

26 **62. Taxes and Withholdings.** Each Settlement Share is intended to settle the Class
27 Members' claims for unpaid wages and penalties. Accordingly, ten percent (10%) of each
28 Settlement Share shall represent unpaid wages and the remaining ninety percent (90%) of each

1 Settlement Share shall represent penalties and interest. The portion of the Settlement Share
2 representing unpaid wages shall be paid to each Participating Class Member subject to any
3 applicable employee-side tax withholdings and deductions, and the Settlement Administrator shall
4 issue an IRS Form W-2 to each Participating Class Member for that amount. The portion of the
5 Settlement Share representing penalties shall be paid to the Participating Class Member in full
6 without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form 1099
7 to each Participating Class Member for that amount. Each Participating Class Member shall be
8 individually responsible for their own share of applicable income tax withholdings and deductions
9 from the Settlement Share attributable to the portion of the settlement for which an IRS Form 1099
10 will be issued. Defendant's payment of the Employer Payroll Tax attributable to the Settlement
11 Share payments constituting wages will be made separately, according to each Defendant's agreed
12 upon proportionate share of the Maximum Settlement Amount, and shall not come from the
13 Maximum Settlement Amount. The Parties agree and understand that Defendant have not made any
14 representations regarding the tax obligations or consequences, if any, related to this Settlement. The
15 Parties agree that Defendant and each Participating Class Member are solely responsible for
16 determining the tax consequences of payments made pursuant to this Settlement and for paying
17 taxes, if any, which are determined to be owed by each of them on such payments (including
18 penalties and interest related thereto) by any taxing authority, whether state, local, or federal.

19 63. Each PAGA Payment Share is intended to settle the PAGA Group Members' claims
20 for civil penalties. Accordingly, one hundred percent (100%) of each PAGA Payment Share shall
21 represent civil penalties. The PAGA Payment Share shall be paid to the PAGA Group Member in
22 full without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form
23 1099 to each PAGA Group Member for that amount, to the extent the PAGA Group Member's
24 PAGA Payment Share is Six Hundred Dollars and Zero Cents (\$600.00) or more. Each PAGA
25 Group Member shall be individually responsible for their own share of applicable income tax
26 withholdings and deductions for his or her PAGA Payment Share.

27 64. **Total Payment Amount.** In no event will Defendant be required to pay more than
28 the Maximum Settlement Amount (unless that amount is increased pursuant to Paragraph 18 above)

1 for distribution to the Plaintiff, Class Counsel, Participating Class Members, PAGA Group
2 Members, LWDA, Settlement Administrator, or for any other costs or expenses not otherwise
3 enumerated. However, Defendant's payment of the Employer Payroll Tax attributable to the
4 Settlement Share payments constituting wages will be made separately, according to each
5 Defendant's agreed upon proportionate share of the Maximum Settlement Amount, and shall not
6 come from the Maximum Settlement Amount.

7 **65. Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
8 conditions of this Settlement, the Settlement Administrator will make the following payments out of
9 the Maximum Settlement Amount as follows:

10 **(a) To Plaintiff:** In addition to their respective Settlement Shares, Plaintiff will
11 apply to the Superior Court for a Class Representative Payment in an amount not to exceed Seven
12 Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00). Defendant will not oppose this Class
13 Representative Payment. The Settlement Administrator will pay the Class Representative Payment
14 approved by the Superior Court out of the Maximum Settlement Amount. Payroll tax withholding
15 and deductions will not be taken from the Class Representative Payment and an IRS Form 1099 will
16 be issued to Plaintiff for this payment.

17 **(b) To Class Counsel:** Class Counsel will apply to the Superior Court for the
18 Class Counsel Fees Payment in an amount not to exceed one-third (1/3) of the Maximum
19 Settlement Amount (currently estimated to be One Hundred and Fifty Thousand Dollars and Zero
20 Cents (\$150,000.00)). Class Counsel will also submit to the Superior Court a memorandum of
21 costs for the Class Counsel Litigation Expenses Payment in an amount not to exceed Twenty-Four
22 Thousand Dollars and Zero Cents (\$24,000.00) as request reasonable costs of suit to be paid from
23 the Maximum Settlement Amount. Defendant will not oppose these requests. The Settlement
24 Administrator will pay the amounts approved by the Superior Court out of the Maximum Settlement
25 Amount. Withholding and deductions will not be taken from the Class Counsel Fees Payment or
26 Class Counsel Litigation Expenses Payment and one or more IRS Forms 1099 will be issued to
27 Class Counsel with respect to those payments.

28 **(c) To the LWDA:** As part of its Motions for Preliminary and Final Approval,

1 the Plaintiff will apply to the Superior Court for approval of the LWDA Payment in the amount of
2 Twenty-Two Thousand, Five Hundred Dollars and Zero Cents (\$22,500.00), which shall constitute
3 the LWDA's seventy-five percent (75%) share of Thirty Thousand Dollars and Zero Cents
4 (\$30,000.00) in civil penalties paid under this Settlement. The remaining Seven Thousand, Five
5 Hundred Dollars and Zero Cents (\$7,500.00) in civil penalties shall be distributed on a *pro rata*
6 basis based upon the number of pay periods worked by each PAGA Group Member ("PAGA
7 Payment").

8 (d) **To the Settlement Administrator:** The Settlement Administrator will be
9 paid from the Maximum Settlement Amount its reasonable fees and expenses as approved by the
10 Superior Court, which are estimated not to exceed Fifteen Thousand Dollars and Zero Cents
11 (\$15,000.00).

12 66. **Appointment of Settlement Administrator.** The Parties will ask the Superior
13 Court to appoint Phoenix Class Action Administrators, a qualified and experienced administrator
14 based in California where the Action is venued, to serve as the Settlement Administrator, which, as
15 a condition of appointment, will agree to be bound by this Agreement with respect to the
16 performance of its duties and its compensation. The Settlement Administrator's duties will include
17 (i) calculating Settlement Shares and PAGA Payment Shares; (ii) preparing, printing, and mailing
18 the Class Notice to all Class Members; (iii) using reasonable measures to contact all Class
19 Members, including conducting a National Change of Address search on all Class Members before
20 mailing the Class Notice to each Class Member's address; (iv) re-mailing the Class Notice to the
21 Class Member's new address for those Class Members whose address had changed; (v) setting up a
22 toll-free telephone number to receive calls from Class Members; (vi) receiving requests for
23 exclusion and objections to the Settlement; (vii) providing the Parties with weekly status reports
24 about the delivery of Class Notices and any requests for exclusion and objections; (viii) issuing the
25 checks to effectuate the payments due under the Settlement; (ix) using reasonable measures to
26 deliver issued checks to Participating Class Members, including use of a "skip-trace" for
27 undeliverable checks; and (x) otherwise administering the Settlement pursuant to this Agreement
28 including paying and reporting the employer's share of the payroll taxes to the appropriate taxing

1 agency. The Settlement Administrator will have the final authority to resolve all disputes
2 concerning the calculation of a Participating Class Member's Settlement Share and/or PAGA Group
3 Member's PAGA Payment Share, subject to the terms set forth in this Agreement. The Settlement
4 Administrator's reasonable fees and expenses are estimated to not exceed Fifteen Thousand Dollars
5 and Zero Cents (\$15,000.00) and will be paid out of the Maximum Settlement Amount, as set forth
6 herein, subject to Court approval.

7 **V. RELEASE OF CLAIMS**

8 67. **Plaintiff's Released Claims.** Plaintiff, individually and on behalf of Plaintiff's
9 heirs, executors, administrators, representatives, attorneys, successors and assigns knowingly and
10 voluntarily releases and forever discharges Defendant, including any and all parent corporation,
11 affiliates, subsidiaries, managers, divisions, predecessors, insurers, franchisors, successors and
12 assigns, including but not limited to each of their current and former employees, attorneys, officers,
13 directors and agents thereof, both individually and in their business capacities, and their employee
14 benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans
15 and programs (collectively, "Plaintiff's Released Parties"), to the fullest extent permitted by law, of
16 and from any and all claims, known and unknown, asserted and unasserted, which Plaintiff has or
17 may have against the Plaintiff's Released Parties as of the date of execution of this Settlement
18 Agreement. Plaintiff is not waiving any rights Plaintiff may have to: (i) Plaintiff's own vested
19 accrued employee benefits under the Defendant's health, welfare or retirement benefits plans, if
20 any, as of the date of execution of this Settlement Agreement; (ii) benefits or rights to seek benefits
21 under applicable workers' compensation (except as to claims under Labor Code §§ 132a and 4553
22 which are expressly released herein) or unemployment insurance or indemnification statutes; (iii)
23 pursue claims which by law cannot be waived by signing this Settlement Agreement; and (iv)
24 enforce this Settlement Agreement.

25 68. To affect a full and complete general release as described above, Plaintiff expressly
26 waives and relinquishes all rights and benefits of § 1542 of the Civil Code of the State of California
27 and does so understanding and acknowledging the significance and consequence of specifically
28 waiving § 1542. Thus, notwithstanding the provisions of § 1542, and to implement a full and

complete release and discharge of all parties, Plaintiff expressly acknowledges this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants Plaintiff has read this Settlement Agreement, including this waiver of California Civil Code § 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Settlement Agreement and specifically about the waiver of § 1542, and that Plaintiff understands this Settlement Agreement and the § 1542 waiver, and so Plaintiff freely and knowingly enters into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Settlement Agreement, and even so Plaintiff agrees that the releases and agreements contained in this Settlement Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assume any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies released or described in this Settlement Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

69. **Participating Class Members Released Claims.** As of the date of the Judgment, each Participating Class Member, and without the need to manually sign a release document, shall release the Released Parties from all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Action, including all of the following claims for relief: (i) failure to pay all regular wages, minimum wages and overtime wages due (Lab. Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, & 1198); (ii) failure to provide compliant meal periods (Lab. Code §§ 226.7 & 512); (iii) failure to provide compliant rest breaks (Lab. Code § 226.7); (iv) failure to timely pay wages during employment (Lab. Code §§ 204 & 210); (v) failure to provide complete, accurate wage statements (Lab. Code § 226); (vi) failure to pay wages timely at time of termination or resignation (Lab. Code §§ 201-203); (vii) failure to indemnify all necessary business expenses (Lab. Code §§ 2800, *et seq.*); (viii) unfair business practices that could have been premised on the claims, causes of action or legal theories of

1 relief described above or any of the claims, causes of action or legal theories of relief pleaded in the
2 operative complaint (Cal. Bus. & Prof. Code § 17200, *et seq.*); (ix) any claim for costs and
3 attorneys' fees and expenses; and (x) any claim arising from the claims described above under
4 applicable federal, state, local or territorial law as well as applicable regulations and Wage Orders
5 (collectively, the "Released Claims"). Participating Class Members who cash their checks are
6 deemed to have waived all Released Claims inclusive of claims under the Fair Labor Standards Act.
7 Participating Class Members who do not cash their checks shall be deemed to waive all Released
8 Claims except for a claim under the Fair Labor Standards Act. Released Claims for Class Members
9 who worked for Defendant in California during the Class Period shall have their claims released
10 during the Class Period.

11 **70. PAGA Group Released Claims.** As of the date of the Judgment, each PAGA Group
12 Member, and without the need to manually sign a release document, shall release the Released
13 Parties for claims for civil penalties pursuant to PAGA based upon all causes of action and claims
14 that were alleged in the Action or reasonably could have been alleged based on the facts and legal
15 theories contained in the Action, and/or the LWDA Exhaustion Letter including all of the following
16 claims for relief: (i) failure to pay all regular wages, minimum wages and overtime wages due (Lab.
17 Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, & 1198); (ii) failure to provide compliant meal
18 periods (Lab. Code §§ 226.7 & 512); (iii) failure to provide compliant rest breaks (Lab. Code §
19 226.7); (iv) failure to timely pay wages during employment (Lab. Code §§ 204 & 210); (v) failure
20 to provide complete, accurate wage statements (Lab. Code § 226); (vi) failure to maintain accurate
21 employment and payroll records (Lab. Code §§ 1174 & 1174.5); (vii) failure to pay wages timely at
22 time of termination or resignation (Lab. Code §§ 201-203); (viii) failure to indemnify all necessary
23 business expenses (Lab. Code §§ 2800, *et seq.*); (ix) all claims under the California Labor Code
24 Private Attorneys General Act of 2004 that could have been premised on the claims, causes of
25 action or legal theories described above or any of the claims, causes of action or legal theories of
26 relief pleaded in the Action; (x) any claim for costs and attorneys' fees and expenses; and (xi) any
27 claim arising from the claims described above under applicable federal, state, local or territorial law
28 as well as applicable regulations and Wage Orders (collectively, the "PAGA Released Claims").

1 PAGA Released Claims for PAGA Group Members who worked for Defendant in California during
2 the PAGA Period shall have their claims released during the PAGA Period.

3 71. Released Parties includes Defendant and their past, present and/or future, direct
4 and/or indirect, officers, directors, members, managers, employees, agents, representatives,
5 attorneys, including but not limited to O'Hagan Meyer, insurers, partners, investors, shareholders,
6 administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors,
7 assigns, and joint venturers.

8 72. In light of the binding nature of a PAGA judgment on non-party employees pursuant
9 to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice,*
10 *Inc.* (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of a Class Member
11 who exclude themselves from the Settlement shall nonetheless receive a payment for the amount of
12 each such individual's estimated share of the PAGA Payment and shall have released PAGA
13 claims, as outlined in Paragraph 70.

14 73. The Released Claims and PAGA Released Claims described in Paragraphs 69 and 70
15 expressly exclude all claims made by a Participating Class Member and/or PAGA Group Member
16 for vested benefits, wrongful termination, unemployment insurance, disability, social security,
17 workers' compensation, claims while classified as exempt, and claims outside of the Class Period
18 and/or PAGA Period.

19 74. **Class Counsel.** As of the Effective Date, and except as otherwise provided by this
20 Settlement, Class Counsel and any counsel associated with Class Counsel waive any further claims
21 to costs and attorneys' fees and expenses against Defendant or the Released Parties arising from or
22 related to the Action, including but not limited to claims based on the Labor Code, the Code of Civil
23 Procedure, PAGA, the Fair Labor and Standards Act, the Business and Professions Code, or any
24 other contract, statute or law ("Class Counsel Released Claims").

25 75. **No Effect on Other Benefits.** The payment of Settlement Shares and/or PAGA
26 Payment Shares will not result in any additional employee benefit payments (such as 401(k),
27 vacation, or bonus) and shall not have any effect on the eligibility for, or calculation of, any
28 employee benefit.

1 **VI. DUTIES OF THE PARTIES**

2 76. **Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to
3 accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be
4 limited to, execution of such other documents and the taking of such other actions as may
5 reasonably be necessary to fulfill the terms of this Settlement unless the Court denies the Settlement
6 with prejudice. The Parties shall use their best efforts, including all efforts contemplated by this
7 Stipulation and any other efforts that may become necessary by court order or otherwise, to
8 effectuate this Stipulation and the terms set forth herein. As soon as practicable after execution of
9 this Stipulation, Class Counsel, with the cooperation of Defendant and Defense Counsel, shall take
10 all necessary and reasonable steps to secure the Court's approval of this Stipulation. The Parties will
11 work together to make any non-material modifications of the Settlement requested by the Court to
12 obtain approval of the Parties' Settlement.

13 77. **Duty to Support and Defend the Class Settlement.** The Parties agree to abide by
14 all of the terms of the Settlement in good faith and to support the Settlement fully and to use their
15 best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral
16 attack.

17 78. **Duties Prior to Court Approval.** Class Counsel shall promptly submit this
18 Stipulation to the Court for preliminary approval and determination by the Court as to its fairness,
19 adequacy, and reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall
20 apply to the Court for the entry of a preliminary order, scheduling a hearing on the question of
21 whether the proposed Class Settlement should be approved as fair, reasonable, and adequate as to
22 the Class Members, approving as to form and content the proposed Class Notice attached hereto as
23 Exhibit "A", respectively, and directing the mailing of the Class Notice to Settlement Class
24 Members.

25 79. **Non-Monetary Relief and Catalyzation of Policy Change.** Although Defendant
26 denies any liability of any kind associated with the claims alleged in the Lawsuit, denies any
27 liability or intentional wrongdoing, Defendant revised and updated their wage and hour policies and
28 practices, including but not limited to their timekeeping and meal period and rest break policies and

1 procedures.

2 **VII. MISCELLANEOUS TERMS**

3 80. **No Admission of Liability.** Defendant denies that it has engaged in any unlawful
4 activity, has failed to comply with the law in any respect, or has any liability to anyone under the
5 claims asserted in the Action. This Settlement is entered into solely for the purpose of
6 compromising highly disputed claims. Nothing in this Settlement is intended or will be construed
7 as an admission of liability or wrongdoing by Defendant, an admission by Plaintiff that any of his
8 claims were non-meritorious, or any defense asserted by Defendant was meritorious. This
9 Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no
10 bearing on, and will not be admissible in connection with, any litigation (other than solely in
11 connection with the Settlement).

12 81. The Parties also agree that this release constitutes a resolution of a good faith dispute
13 concerning wages and complies with Labor Code Section 206.5, which reads in part:

14
15 “Execution of release of claim or right on account of wages due.

16 No employer shall require the execution of any release of any
17 claim or right on account of wages due, or to become due, or made,
18 or made as an advance on wages to be earned, unless payment of
19 those wages has been made.”

20
21 82. Whether or not the Judgment becomes Final, neither the Settlement, any document,
22 statement, proceeding or conduct related to the Settlement, nor any reports or accounting of those
23 matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be
24 evidence for any purpose adverse to Defendant or any of the Released Parties, including, but not
25 limited to, evidence of a presumption, concession, indication or admission by any of the Released
26 Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed,
27 referred to or offered in evidence against any of the Released Parties, or any other civil, criminal or
28 administrative action or proceeding except for purposes of effectuating this Settlement.

1 83. Notwithstanding Paragraph 82 of this Settlement, any and all provisions of this
2 Settlement may be admitted in evidence and otherwise used in any and all proceedings to enforce
3 any or all terms of this Settlement, or in defense of any claims released or barred by this Settlement.

4 84. **Non-Disparagement.** Plaintiff and Class Counsel agree not to make any untruthful,
5 malicious, disparaging or defamatory statements, allegations, comments or communications,
6 regardless of form (whether written, oral, electronic, including but not limited to Glassdoor, Yelp,
7 or otherwise), regarding the Released Parties. Plaintiff and Class Counsel further agree not to
8 encourage authorize or permit any such statements, allegations, comments or communications to be
9 made by others on their behalf. To the extent Plaintiff and/or Class Counsel have posted any
10 negative comments about the Released Parties on Glassdoor, Yelp, or other websites, Plaintiff
11 and/or Class Counsel agree to request that these comments be removed and to provide a copy of
12 such request to Defense Counsel within 30 days of the execution of this Agreement.

13 85. **Waiver of Reemployment.** Plaintiff acknowledges that he has no intent to apply for
14 employment and/or re-employment with Defendant. Plaintiff further acknowledges that Defendant
15 or any related, successor, parent, or subsidiary companies has the right to refuse rehire Plaintiff for
16 non-discriminatory and non-retaliatory reasons and Plaintiff acknowledge that Defendant's position
17 is that such legitimate non-discriminatory and non-retaliatory reasons exist.

18 86. **Integrated Agreement.** After this Settlement is signed and delivered by all Parties
19 and their counsel, this Settlement and its exhibits will constitute the entire agreement between the
20 Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties,
21 covenants, or inducements have been made to any Party concerning this Settlement or its exhibits
22 other than the representations, warranties, covenants, and inducements expressly stated in this
23 Settlement and its exhibits.

24 87. **Attorney Authorization.** Class Counsel and Defense Counsel warrant and represent
25 that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action
26 required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms,
27 and to execute any other documents required to effectuate the terms of this Settlement. The Parties
28 and their counsel will cooperate with each other and use their best efforts to affect the

1 implementation of the Settlement. In the event the Parties are unable to reach agreement on the
2 form or content of any document needed to implement the Settlement, or on any supplemental
3 provisions that may become necessary to effectuate the terms of this Settlement, the Parties will
4 seek the assistance of mediator Steve Rottman, Esq., and if no resolution is reached the Superior
5 Court, and in all cases all such documents, supplemental provisions and assistance of the court will
6 be consistent with this Settlement.

7 **88. Modification of Agreement.** This Agreement, and any and all parts of it, may be
8 amended, modified, changed, or waived only by an express written instrument signed by all Parties,
9 their successors-in-interest, and/or the Parties' respective counsel, as authorized.

10 **89. Settlement Binding on Successors.** This Settlement Agreement will be binding
11 upon, and inure to the benefit of, the successors of each of the Parties.

12 **90. Applicable Law.** All terms and conditions of this Settlement and its exhibits will be
13 governed by and interpreted according to the laws of the State of California, without giving effect to
14 any conflict of law principles or choice of law principles.

15 **91. Cooperation in Drafting.** The Parties have cooperated in the drafting and
16 preparation of this Settlement. This Settlement will not be construed against any Party on the basis
17 that the Party was the drafter or participated in the drafting.

18 **92. Fair Settlement.** The Parties and their respective counsel believe and warrant that
19 this Settlement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at
20 this Settlement through arms-length negotiations, taking into account all relevant factors, current
21 and potential.

22 **93. Headings.** The descriptive heading of any section or Paragraph of this Settlement is
23 inserted for convenience of reference only and does not constitute a part of this Settlement.

24 **94. Notice.** All notices, demands or other communications given under this Settlement
25 will be in writing and deemed to have been duly given as of the third business day after mailing by
26 U.S. Mail, addressed as follows:

27 *To Class Counsel:*

Kane Moon, Esq.
Allen Feghali, Esq.
Michael M. Citrin, Esq.

MOON LAW GROUP, PC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017

To the Defendant's Counsel:

Matthew C. Sgnilek, Esq.
Andrea Rosenkranz, Esq.
O'HAGAN MEYER
3200 Park Center Drive, Suite 700
Costa Mesa, CA 92626

95. **Execution in Counterpart.** This Settlement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures, scanned PDF signatures, and electronic signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

DATED: _____

JOSE MARTINEZ

DATED: 8/21/2023

HIGH DESERT AUTO SUPPLY, INC.

By: _____

DocuSigned by:
Scott Nassif
65B759BD26E349F...

Its: _____

Presidanet

MOON LAW GROUP, PC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017

To the Defendant's Counsel:

Matthew C. Sgnilek, Esq.
Andrea Rosenkranz, Esq.
O'HAGAN MEYER
3200 Park Center Drive, Suite 700
Costa Mesa, CA 92626

95. **Execution in Counterpart.** This Settlement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures, scanned PDF signatures, and electronic signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

DATED: 8/22/2023

JOSE MARTINEZ

DocuSigned by:

Jose Martinez

C9B6EACF838C4GC...

DATED: _____

HIGH DESERT AUTO SUPPLY, INC.

By: _____

Its: _____

1 DATED: 09/01/2023

MOON LAW GROUP, PC



2
3
4 By: _____

Kane Moon, Esq.
Allen Feghali, Esq.

5
6 Attorneys for Plaintiff
JOSE MARTINEZ

7
8 DATED: _____

O'HAGAN MEYER

9
10 By: _____

11 Matthew C. Sgnilek, Esq.
Andrea Rosenkranz, Esq.

12 Attorneys for Defendant
13 HIGH DESERT AUTO SUPPLY, INC.
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1 DATED: _____

MOON LAW GROUP, PC

4 By: _____

Kane Moon, Esq.
Allen Feghali, Esq.

Attorneys for Plaintiff
JOSE MARTINEZ

8 DATED: 8/18/2023

O'HAGAN MEYER

10 By: _____

DocuSigned by:

Andrea Rosenkranz

Matthew C. Spivack, Esq.
Andrea Rosenkranz, Esq.

Attorneys for Defendant
HIGH DESERT AUTO SUPPLY, INC.

Exhibit “A”

Jose Martinez v. High Desert Auto Supply, Inc.
San Bernardino County Superior Court Case No. CIVSB2206780



<<PSA ID>>

<<First Last>>

<<Address>>

<<City, State, Zip, Country>>

Name/Address Changes (if any):

NOTICE OF CLASS ACTION SETTLEMENT

If you are or were a non-exempt, hourly employee of High Desert Auto Supply, Inc. at any time between March 30, 2018, and March 31, 2023, you may be able entitled to receive money from a Class Action Settlement.

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

PLEASE READ THIS NOTICE.

Your legal rights are affected whether you act or don't act. Your legal rights and options—and the deadlines to use them—are explained in this notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE SETTLEMENT PAYMENT	You are not required to take action to receive a payment. If you do nothing, you will automatically receive a payment from the Settlement if the Court finally approves the Settlement. In exchange, you will be bound by the Settlement including the release of all claims covered by the Settlement.
REQUEST EXCLUSION	Request to be excluded and receive no benefits from the Settlement. If you submit a Request for Exclusion, you will not receive a settlement payment. PAGA Group Members (defined below) cannot opt-out of the PAGA portion of the proposed Settlement, and will receive their PAGA Payments even if they opt out of the class settlement.
OBJECT	If you wish to object to the Settlement, you may submit a written objection and supporting papers to the Settlement Administrator. Any written objections will be provided to the Court. You may also offer your oral comments at the Final Approval Hearing. In order to object, you must not have excluded yourself from the Settlement.

1. Why should you read this Notice?

A proposed settlement (the "Settlement") has been reached in a class action lawsuit entitled *Jose Martinez v. High Desert Auto Supply, Inc.* San Bernardino County Superior Court Case No. CIVSB2206780 (the "Action" or "Lawsuit"). The Defendant in the Action is High Desert Auto Supply, Inc. (referred in this Notice as "Defendant.")

The Court has granted preliminary approval of a “Settlement Class” defined as follows:

All persons employed in the State of California as hourly, non-exempt employees by High Desert Auto Supply, Inc. at any time between March 30, 2018, and March 31, 2023.

The Court has also granted preliminary approval of a “PAGA Group” defined as follows:

All persons employed in the State of California as hourly, non-exempt employees by Defendant at any time between March 30, 2021, and March 31, 2023.

Defendant’s employment records indicate that you meet one or both of these definitions, which makes you a member of the Settlement Class (referred to in this Notice as a “Class Member”) and possibly a member of the PAGA Group (referred to in this Notice as a “PAGA Group Member”). The Court directed that this Notice be sent to all Class Members and PAGA Group Members to inform you about the case and your rights and options before the Court decides to approve the Settlement. If the Court approves the Settlement, and after any appeals are resolved, payments will be made to Class Member who have not opted out of the Settlement and all PAGA Group Members.

This Notice explains the Lawsuit, the Settlement, your legal rights and options, what benefits are available and how to get them.

2. What is this Lawsuit about?

On March 30, 2022, Plaintiff Jose Martinez filed the operative class action complaint against the Defendant alleging several violations of California wage and hour laws. Plaintiff filed the Action on behalf of himself and on behalf of all current and former non-exempt, hourly employees. By Plaintiff’s Complaint, Plaintiff alleges that the Defendant: (1) failed to pay at least the minimum wage for all hours worked; (2) failed to pay overtime wages; (3) failed to provide compliant meal periods; (4) failed to provide compliant rest periods; (5) failed to provide accurate wage statements; (6) failed to timely pay wages at separation; (7) failed to indemnify necessary business expenses; and (8) violated California’s Unfair Competition Law. On June 7, 2022, Plaintiff amended his Complaint to add a cause of action alleging Defendant owes civil penalties under California’s Private Attorneys General Act of 2004, California Labor Code §§ 2698-2699.5 (“PAGA”).

Defendant vigorously denies all the claims and contentions made in the Lawsuit and maintains it has fully complied with the law. However, Defendant has agreed to settle the Lawsuit to avoid the expense of litigation.

3. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Instead, both sides agreed to a Settlement. This allows the Parties to avoid the risk and uncertainty of trial and any subsequent appeal, and all affected employees who have not opted out of the Settlement will receive compensation. The Settlement is not an admission of liability by Defendant. Plaintiff and the attorneys believe the Settlement is fair, reasonable and adequate, and in the best interests of all Class Members.

4. What are the terms of the Settlement?

Defendant will pay Four Hundred and Fifty Thousand Dollars and Zero Cents (\$450,000.00) to settle the Action

(the “Maximum Settlement Amount”). The Maximum Settlement Amount includes: (a) all Settlement Payments to Participating Class Members; (b) the Service Award to the Class Representative; (c) the Class Counsel’s attorneys’ fees and costs; (d) a payment to the California Labor and Workforce Development Agency for civil penalties brought under PAGA; (e) all PAGA Payments to the PAGA Group Members; and (f) the reasonable fees and costs of the Settlement Administrator. Defendant will pay their portion of all payroll taxes resulting from the Settlement in addition to the Maximum Settlement Amount.

The Court has preliminarily approved the following payments from the Maximum Settlement Amount. Class Counsel will request that the Court award Class Counsel (1/3) of the Maximum Settlement Amount (currently estimated to be One Hundred and Fifty Thousand Dollars and Zero Cents (\$150,000.00)) in attorneys’ fees and up to Twenty-Four Thousand Dollars and Zero Cents (\$24,000.00) in out-of-pocket litigation costs, up to Seven Thousand Dollars and Zero Cents (\$7,000.00) for Settlement Administration Costs for the third-party Settlement Administrator, and up to Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) for the Service Award for the Class Representative in recognition of his time and service to the Class in pursuing the Action and in fulfilling their obligations as the Class Representative. Additionally, the Settlement provides for a payment of Thirty Thousand Dollars and Zero Cents (\$30,000.00) (the “LWDA Payment”) to resolve PAGA Group Members’ claims under PAGA, of which Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) will be distributed to the PAGA Group Members and Twenty-Two Thousand, Five Hundred Dollars and Zero Cents (\$22,500.00) will be paid to the California Labor and Workforce Development Agency (“LWDA”). This allocation of the LWDA Payment is required by California law. The final amounts of these various payments are all subject to Court approval.

After deductions of the preceding Court-approved payments, the remaining amount—the “Net Settlement Amount”—will be distributed to those Class Members who have not opted out of the Settlement (the “Participating Class Members”). No portion of the Maximum Settlement Amount will be returned to Defendant.

5. How much can I expect to receive?

Each Participating Class Member will receive a *pro rata* share of the Net Settlement Amount based on the number of workweeks the person worked for Defendant as a non-exempt, hourly employee during the Class Period, defined as the period of time from March 30, 2018, and March 31, 2023. Any workweek in which a Class Member worked at least one day shall be counted as a workweek.

To calculate a Class Member’s Individual Settlement Payment, the Net Settlement Amount will be divided by the aggregate total number of workweeks of all Participating Class Members, resulting in the “Workweek Value.” Each Participating Class Member’s Individual Settlement Payment will be calculated by multiplying each individual Participating Class Member’s total number of workweeks by the Workweek Value.

Your Compensable Workweeks are: <<Workweeks>>

Your Estimated Individual Settlement Payment is: \$<<Est.SettlementAmt>>

All settlement payments are subject to taxation. Each Individual Settlement Payment will be allocated as follows: (a) 10% as wages that will be subject to deductions and withholdings for the employee’s share of state and federal payroll taxes; and (b) 90% as penalties and interest that will not be subject to deductions and withholdings. Each Participating Class Member will receive an IRS Form W-2 with respect to the portion of the Settlement Payment allocated to wages and an IRS Form-1099 with respect to the portion of the Settlement Payment allocated to penalties and interest, unless said payment is less than or equal to \$600.00. Prior to mailing Settlement checks, the Settlement Administrator will calculate and deduct the employee’s required withholdings and payroll taxes

from the “wage” portion of the Settlement payment. Defendant will separately pay the employer’s share of payroll taxes with respect to the “wage” portion of each Settlement payment.

Please note that each Participating Class Members will be responsible for his/her share of taxes attributable to the receipt of an Individual Settlement Payment. The Parties and their attorneys cannot provide and will not provide any advice regarding tax obligations. Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

Each PAGA Group Member will receive a *pro rata* share of the PAGA Payment based on the number of pay periods the person worked for Defendant as a non-exempt, hourly employee during the PAGA Period, defined as the period of time from March 30, 2021, and March 31, 2023. Any pay period in which a PAGA Group Member worked at least one day shall be counted as a pay period.

To calculate a PAGA Group Member’s Individual PAGA Payment, the PAGA Payment will be divided by the aggregate total number of pay periods of all PAGA Group Members, resulting in the “Pay Period Value.” Each PAGA Group Member’s Individual Settlement Payment will be calculated by multiplying each individual PAGA Group Member’s total number of pay periods by the Pay Period Value.

Your Compensable Pay Periods are: <<PayPeriods>>

Your Estimated Individual PAGA Payment is: \$<<Est.PAGAPaymentAmt>>

All settlement payments are subject to taxation. Each Individual PAGA Payment will be allocated as follows: 100% as penalties that will not be subject to deductions and withholdings. Each PAGA Group Member will receive an IRS Form-1099 for his or her Individual PAGA Payment, unless said payment is less than or equal to \$600.00.

The Parties and their attorneys cannot provide and will not provide any advice regarding tax obligations. Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

6. What if I disagree with the number of workweeks and/or pay periods credited to me in this Notice?

The information concerning the number of workweeks and/or pay periods you worked as an hourly, non-exempt employee during the Class Period and/or PAGA Period is based on Defendant’s records. To dispute this number of workweeks and/or pay periods credited to you, you must send written notice to the Settlement Administrator. To be valid, your written dispute of weeks worked must: (1) include your full name and address and (2) be accompanied by satisfactory evidence of the actual weeks and/or pay periods worked as an hourly, non-exempt employee for Defendant during the Class Period and/or PAGA Period, including any supporting documentation (e.g., copies of your pay stubs). To be timely, your written dispute of workweeks and/or pay periods worked must be mailed by first-class U.S. Mail (or the equivalent), e-mail, or fax, to the Settlement Administrator at the address, e-mail address, or fax number provided below, and be postmarked or dated on or before _____, 2023.

The Parties and the Settlement Administrator will promptly evaluate the evidence submitted and discuss in good faith how many workweeks and/or pay periods should be credited to the Class Member and/or PAGA Group Member. The Settlement Administrator will make the final decision as to how many workweeks and/or pay periods should be credited to the Class Member and/or PAGA Group Member and report the outcome to the Class Member and/or PAGA Group Member.

7. How and when will I get a payment? How do I update my address?

How do I receive money from the Settlement? You do not need to do anything to receive your Individual Settlement Payment and/or Individual PAGA Payment. Just watch your mail for a check and cash it when you get it. If you do not exclude yourself from the Settlement, you will automatically receive money from the Settlement. You do not need to make a claim or take any other action to receive your share of the Settlement.

When will I receive my Settlement payment? Class Members who do not opt out of the Settlement will receive their payments only after the Court grants final approval to the Settlement and after any appeals are resolved. PAGA Group Members will receive their payments only after the Court grants final approval to the Settlement and after any appeals are resolved. If there are appeals, resolving them can take time. Please be patient.

Settlement payment checks must be cashed soon after receipt. The Settlement checks will be able to be cashed for 180 days after they are issued. After 180 days, the Settlement checks will no longer be able to be cashed. Any funds represented by Settlement checks remaining uncashed for more than 180 days after issuance shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure Section 1500, *et seq.* in the names of those Participating Class Members and/or PAGA Group Members who did not cash their checks until such time they claim their property.

Change of address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure that you receive your Settlement payment. If you change your address, or if this notice was not mailed to your correct address, you should immediately provide your current address to the Settlement Administrator. The Settlement Administrator can be reached at (800) ###-####, or at the address provided below.

8. What claims are being released by the Settlement?

If the Settlement is approved by the Court, a Judgment will be entered by the Court. Upon the Effective Date of the Judgment, all Participating Class Members shall release the Released Parties from the Released Claims for the Class Period, which is defined as the period of time between March 30, 2018, and March 31, 2023.

The Released Claims are defined as all causes of action and claims that were alleged or could have been alleged under the Labor Code, state or local wage and hour laws and Wage Orders, whether known or unknown, based on the facts and legal theories contained in the Complaint, including but not limited to: (i) failure to pay all regular wages, minimum wages and overtime wages due (Lab. Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, & 1198); (ii) failure to provide compliant meal periods (Lab. Code §§ 226.7 & 512); (iii) failure to provide compliant rest breaks (Lab. Code § 226.7); (iv) failure to timely pay wages during employment (Lab. Code §§ 204 & 210); (v) failure to provide complete, accurate wage statements (Lab. Code § 226); (vi) failure to pay wages timely at time of termination or resignation (Lab. Code §§ 201-203); (vii) failure to indemnify all necessary business expenses (Lab. Code §§ 2800, *et seq.*); (viii) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint (Cal. Bus. & Prof. Code § 17200, *et seq.*); (ix) any claim for costs and attorneys' fees and expenses; and (x) any claim arising from the claims described above under applicable federal, state, local or territorial law as well as applicable regulations and Wage Orders. The Participating Class Members who cash their Settlement checks further acknowledge that they are releasing any claims they have against Defendant under the Fair Labor Standards Act ("FLSA") (collectively, the "Released Claims"). Other than for Plaintiff, claims of Participating Class Members, if any, for vested benefits, wrongful termination, unemployment insurance, disability benefits, social security, workers' compensation, claims while classified as exempt, and

claims outside of the Class Period are not encompassed within the definition of “Released Claims.”

Any Class Member who does not request exclusion by the applicable deadline will be considered to have accepted the release and to have waived any and all of the Released Claims against the Released Parties.

If the Settlement is approved by the Court, a Judgment will be entered by the Court. Upon the Effective Date of the Judgment, all PAGA Group Members shall release the Released Parties from the PAGA Released Claims for the PAGA Period, which is defined as the period of time between March 30, 2021, and March 31, 2023.

The PAGA Released Claims are defined as all claims for civil penalties pursuant to PAGA based upon all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Action, and/or the LWDA Exhaustion Letter including all of the following claims for relief: i) failure to pay all regular wages, minimum wages and overtime wages due (Lab. Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, & 1198); (ii) failure to provide compliant meal periods (Lab. Code §§ 226.7 & 512); (iii) failure to provide compliant rest breaks (Lab. Code § 226.7); (iv) failure to timely pay wages during employment (Lab. Code §§ 204 & 210); (v) failure to provide complete, accurate wage statements (Lab. Code § 226); (vi) failure to maintain accurate employment and payroll records (Lab. Code §§ 1174 & 1174.5); (vii) failure to pay wages timely at time of termination or resignation (Lab. Code §§ 201-203); (viii) failure to indemnify all necessary business expenses (Lab. Code §§ 2800, *et seq.*); (ix) all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Action; (x) any claim for costs and attorneys’ fees and expenses; and (xi) any claim arising from the claims described above under applicable federal, state, local or territorial law as well as applicable regulations and Wage Orders (collectively, the “PAGA Released Claims”). PAGA Released Claims for PAGA Group Members who worked for Defendant in California during the PAGA Period shall have their claims released during the PAGA Period.

The Released Parties include Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

9. What are my options?

a. **Participate in the Settlement and Receive a Settlement Payment.** If you want to participate in the Settlement, you do not have to do anything. You will receive your Individual Settlement Payment automatically if the Settlement is finally approved by the Court. If applicable, you will receive your Individual PAGA Payment automatically if the Settlement is finally approved by the Court.

b. **Exclude yourself from the Settlement.** If you do not want to be part of the Settlement, you can request to be excluded from the Settlement by mailing a written Request for Exclusion to the Settlement Administrator. If you exclude yourself, you will not receive your Individual Settlement Payment, you will not be subject to the terms of the Settlement, and you will retain whatever rights you may currently have. To be valid, your Request for Exclusion must include: (i) include your full name and address; (ii) a clear statement that you wish to opt out of, or be excluded from, the Settlement in *Martinez v. High Desert Auto Supply, Inc.*, San Bernardino County Superior Court Case No. CIVSB2206780; (iii) a clear statement that you understand that by opting out, you will not receive any monies from the settlement; and (iv) your signature. To be timely, a Request for Exclusion must be mailed by first-class U.S. Mail (or the equivalent), e-mail, or fax, to the Settlement Administrator at the address, e-mail address, or fax number provided below, and be postmarked or dated on or before [REDACTED], 2023.

If you are also a member of the PAGA Group, you may not exclude yourself from the PAGA Group and will be bound by the PAGA Released Claims even if you exclude yourself from the Settlement Class.

c. **Object to the Settlement.** If you're a Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views. If the Court rejects your objection and finally approves the Settlement, you will still be bound by the terms of the Settlement, but you will also receive a monetary award.

To object, you may submit a written objection stating why you object to the Settlement, or you may simply appear at the Final Approval Hearing set for [REDACTED], 2023 at [REDACTED] a.m. in the San Bernardino County Superior Court and discuss your objection with the Court and the Parties at your own expense. Written objections must include: (i) your full name and address; (ii) the approximate dates of your employment at Defendant; (iii) the case name and number (*Martinez v. High Desert Auto Supply, Inc.*, San Bernardino County Superior Court Case No. CIVSB2206780); (iv) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iv) copies of any papers, briefs, or other documents on which the objection is based, if any; (v) your signature; and (vi) a statement of whether you intend to appear at the Final Approval Hearing, either in person or by counsel. To be timely, a written objection must be mailed by first-class U.S. Mail (or the equivalent), e-mail, or fax, to the Settlement Administrator at the address, e-mail address, or fax number provided below, and be postmarked or dated on or before [REDACTED], 2023.

Please note that you cannot both exclude yourself and object to the Settlement. In order for you to object to this Settlement, or any term of it, you may not submit a Request for Exclusion.

10. Who are the attorneys representing the Plaintiff, the Settlement Class, and the PAGA Group?

The Court has appointed the following lawyers as "Class Counsel" to represent all Class Members:

Kane Moon
Allen Feghali
Michael M. Citrin
MOON LAW GROUP, PC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128

You will not be charged for these lawyers.

11. How will the attorneys for the Settlement Class and the PAGA Group be paid?

All payments for Class Counsel's attorneys' fees and costs will be made from the Maximum Settlement Amount. Class Counsel intends to request an award of attorneys' fees up to one-third ((1/3) of the Maximum Settlement Amount (currently estimated to be One Hundred and Fifty Thousand Dollars and Zero Cents (\$150,000.00)), plus reimbursement of reasonable, actual out-of-pocket costs incurred in the litigation, up to Twenty Thousand Dollars and Zero Cents (\$20,000.00). Class Counsel has been prosecuting this Action on behalf of Plaintiff and the Settlement Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs. The Court will decide the amount of fees and expenses to award at the Final Approval Hearing.

12. When and where will the Court decide to approve the Settlement?

The Court has preliminarily approved the settlement and will hold a hearing, called a Final Approval Hearing, to decide whether to give final approval to the Settlement. The Court will hold the Final Approval Hearing on _____, 2023, at _____ a.m., in Department S-17 of the San Bernardino County Superior Court located at 247 West Third Street, San Bernardino, CA 92415, before the Honorable Joseph T. Ortiz. At the Final Approval Hearing, the Court will rule on Class Counsel's request for attorneys' fees and litigation costs, the Class Representative Service Award, and the Settlement Administration Costs.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing. If you did not submit a Request for Exclusion, you or your attorney may appear at the hearing at your own expense and request to be heard. The Final Approval Hearing may be postponed without further notice.

13. Will I be subject to discipline if I participate in the Settlement?

No. Defendant approve the Settlement and will not retaliate in any way against any Class Member for participating in the Settlement. Your decision to participate, not participate, or object to this Settlement will not affect your employment with Defendant or Defendant's treatment of you as a former employee.

14. What is the Settlement Administrator's address?

Any Request for Exclusion, Notice of Objection, address change request, and all other correspondence intended for the Settlement Administrator may be mailed, e-mailed, or faxed, to the Settlement Administrator as follows:

Martinez v. High Desert Auto Supply, Inc.

c/o _____

E-mail: _____

Facsimile: _____

15. How Can I Get Additional Information?

If you have questions, you can call the Settlement Administrator at _____.

PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT'S MANAGERS, SUPERVISORS,
OR ATTORNEYS ABOUT THIS SETTLEMENT
They will not be able to assist you.