

Gary R. Basham, Bar No. 130119
BASHAM LAW GROUP
8801 Folsom Blvd., Suite 280
Sacramento, CA 95826
Telephone: (916) 282-0841
gary@bashamlawgroup.com

Attorneys for Plaintiff KENNETH MURPHY, on
behalf of himself, all similarly aggrieved current and
former employees of Defendant, the Proposed Class
and the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF STANISLAUS

KENNETH MURPHY, on behalf of himself, all
similarly aggrieved current and former employees
of Defendant and the State of California,

Plaintiff,

v.

STINSON ENTERPRISES, INC., a California
Corporation doing business as MODESTO
TOYOTA; KAMIL ESHO, an individual;
and DOES 1-10.

Case No. CV-23-002354

**DECLARATION OF GARY R. BASHAM
IN SUPPORT OF PLAINTIFF'S
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Action Filed: April 28, 2023
FAC Filed: July 12, 2023

Trial Date: TBA

Date: October 3, 2024
Time: 8:30 a.m.
Dept: 23

I, GARY R. BASHAM, declare:

1. I am an attorney licensed to practice law in the State of California and
before this Court. I am the founder and managing shareholder at Basham Law Group, attorneys
for Plaintiff Kenneth Murphy ("Plaintiff"). The facts set forth herein are personally known to me
and, unless otherwise stated, are based on my firsthand knowledge and/or observation. If called
as a witness, I could and would competently testify thereto under oath.

2. This declaration is submitted in support of Plaintiff's Motion for Final
Approval of Class Action and PAGA Settlement.

1 3. In late January and early February 2024, Plaintiff entered into a **Class**
2 **Action & PAGA Settlement Agreement (hereinafter “Settlement Agreement”)** with
3 defendant Stinson Enterprises, Inc. (“Defendant”). (Plaintiff and Defendant are collectively, the
4 “Parties”.) The Settlement Agreement results in a gross settlement fund of \$50,000.00 (hereafter
5 “Gross Settlement Amount”) for 63 Class Members in exchange for a full release of Class/PAGA
6 claims. **A true and correct copy of the Settlement Agreement is attached hereto as Exhibit A**
7 **and incorporated herein by reference.**

8 4. Defendant is a new and used car dealership which does business as
9 Modesto Toyota. Plaintiff is a former employee of Defendant. Defendant employed Plaintiff in
10 several different sales positions, ending with the position of Used Car Manager’s Assistant.
11 Plaintiff worked for Defendant from approximately July 2021 to January 2023. (First Amended
12 Complaint (“FAC”) ¶¶4-5.)

13 5. This is a Class Action, pursuant to Code of Civil Procedure §382, seeking
14 damages, restitution, injunctive relief, penalties, reasonable attorneys’ fees and costs, under the
15 California Labor Code as set forth herein, on behalf of Plaintiff and all other individuals who are
16 or have been employed by Defendant in California who were required to use their personal cell
17 phones for Defendant’s business purposes without any reimbursement, restitution or
18 compensation in violation of Labor Code section 2802. Plaintiff further maintains a cause of
19 action pursuant to the Private Attorneys’ General Act (“PAGA”) based on the Labor Code section
20 2802 violation. Plaintiff further asserts a number of individual claims, which are subject to a
21 separate settlement agreement. (FAC ¶1.)

22 6. Plaintiff filed his Complaint on April 28, 2023, asserting causes of action
23 for (1) Failure to Reimburse For Business Expenses (**Class**); (2) Failure to Provide Rest Breaks
24 (Individual); (3) Failure to Provide Meal Periods (Individual); (4) Failure to Furnish Accurate
25 Itemized Wage Statements (Individual); (5) Failure to Timely Pay All Wages Due at Termination
26 – Waiting Time Penalties (Individual); (6) Unfair Business Practices (**Class**) (7) Sexual
27 Harassment in Violation of FEHA (Individual); (8) Sexual Battery (Individual); (9) Intentional

28 **Infliction of Emotional Distress (Individual); and (10) Negligent Infliction of Emotional Distress**

1 any forwarding addresses. As a result, the two Class Notices were determined to be undeliverable.
2 The Class Notice advised the Class Members that the deadline for them to dispute the number of
3 Workmonths, Request for Exclusion, or make an Objection was July 26, 2024. No Class
4 Members have opted-out of the Class Settlement, no one submitted a dispute on the Workmonths
5 and there are no objections to the settlement. **A true and correct copy of the Administrator's**
6 **September 5, 2024, Summary Report is attached hereto as Exhibit C and incorporated**
7 **herein by reference.**

8 14. The Parties' initial arms-length settlement negotiations resulted in a
9 mediation before noted mediator Laurie Saldaña on December 12, 2023. The Parties agreed to
10 settle the Action during the mediation and signed a short form written agreement. During the
11 settlement process, the Parties considered the evidence, discussed the risks and benefits of
12 continued litigation and proceeding with class certification and/or trial. The settlement
13 negotiations were at arm's length and, although conducted in a professional manner, were
14 adversarial at all times. Defendant maintained its position that its policies and practices were
15 compliant with California law, that Class Certification was not appropriate, and that the case was
16 not manageable for trial. Although the Parties were willing to explore the potential for a
17 settlement, each side was also committed and prepared to litigate through trial and appeal if a
18 settlement had not been reached. The proposed Settlement was reached at the end of a process
19 that was neither fraudulent nor collusive. To the contrary, counsel for the Parties advanced their
20 respective positions throughout the settlement negotiations. The Settlement Agreement that was
21 reached with the assistance of Ms. Saldaña takes into account the strengths and weaknesses of
22 each side's case. Each side has extensive experiencing litigating employment class actions and
23 agrees the Settlement Agreement is fair, balanced, and reasonable. Thereafter, the Parties
24 engaged in further significant negotiations, which led to the Parties executing the Settlement
25 Agreement in late January and early February 2024, which forms the basis of this Motion.

26 15. I conducted a thorough investigation into the applicable facts and have
27 diligently pursued an investigation of the asserted claims against Defendant. The Parties engaged
28 in significant informal discovery before the mediation to ensure I had the information and

documents I needed to enter into informed settlement negotiations on the class and PAGA claims. Defendant produced Plaintiff's personnel file, wage records, and documents relating to their policies, practices, and procedures regarding reimbursement of business expenses. As part of Defendant's production, I reviewed records relating to the size and scope of the Class Members, as well as data permitting me to understand the number of Workmonths in the PAGA and Class Periods. Moreover, in preparation for the mediation, I extensively interviewed Plaintiff several times prior to the mediation, and at the mediation as well, to fully understand the relevant facts applicable to the Class and PAGA claims. The Parties agree that the above-described investigation and evaluations, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respect Parties' positions and to compromise the issues on a fair and equitable basis. (**Exhibit A ¶ II.F.**)

16. Based on my own independent investigation and evaluation, I am of the opinion that the Parties' Settlement is fair, reasonable, and adequate and is in the best interests of the Plaintiff and all Class and PAGA Members in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, the difficulties in meeting the various Class Certification and Manageability issues, and the numerous potential appellate issues. The Parties further recognize that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial proceedings and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of further litigation. The Parties further have taken into account the risk and uncertainty of the outcome inherent in any further litigation. The Settlement Agreement that was reached with the assistance of the mediator takes into account the strengths and weaknesses of each side's case.

17. Plaintiff recognizes there are serious risks concerning his Class and PAGA claims. Defendant denies Plaintiff's allegations and asserts the following defenses: (1) many sales employees had no business need to use their personal cell phones at work; (2) landline phones were available to sales employees for their use for business purposes should the need arise; and (3) any use of personal cell phones by sales employees for business purposes was based on convenience and not any requirement made by Defendant. By entering into the Settlement

1 matters and provided advice and counsel to clients on wage & hour and other employment law
2 issues.

3 22. Because of my interest and growing expertise in wage & hour and other
4 employment law matters, in approximately 1992 I started working for the National Law Firm of
5 Jackson Lewis in San Francisco, California, where I practiced employment law exclusively. In
6 1995, I became a partner at Jackson Lewis, and in 1998 I helped open the Jackson Lewis office in
7 Sacramento California. In Sacramento, I was the Sacramento partner in charge of all litigation
8 matters in the office. Throughout my employment and partnership at Jackson Lewis in both San
9 Francisco and Sacramento offices, I handled and was lead attorney in many wage & hour class
10 action litigation matters and provided many clients with advice and counsel on a variety of wage
11 and hour and other employment law issues.

12 23. In approximately 2007, I left Jackson Lewis to open up my own law firm,
13 initially called Basham Parker LLP and thereafter in late 2010 Basham Law Group. At both
14 Firms I practiced employment law exclusively, with a focus on employment/wage & hour
15 litigation. At Basham Parker LLP and Basham Law Group, I was lead counsel on a number of
16 wage & hour class actions.

17 24. In the California Wage & Hour case of *Kelly DeGraaf v Strategies to*
18 *Empower People, Inc.*, Sacramento County Superior Court Case No. 34-2015-00175449, the
19 Court issued an Order and Judgment Approving Class and PAGA Settlement on August 31, 2017,
20 holding that Basham Law Group was well qualified to act as Class Counsel in that case, and
21 appointed Basham Law Group as Class Counsel as a result.

22 25. In the California Wage & Hour case of *Lloyd Bellamy v Elk Grove Auto*
23 *Group, Inc.*, Sacramento County Superior Court Case No. Case No. 34-2018-00236097, the Court
24 issued an Order on June 11, 2019, holding that Basham Law Group was well qualified to act as
25 Class Counsel in that case, and appointed Basham Law Group as Class Counsel as a result.

26 26. In the California Wage & Hour case of *LaCresha Andrews v Kohl's*
27 *Department Stores, Inc.*, Sacramento County Superior Court Case No. Case No. 34-2018-
28 00234007, the Court issued an Order on August 30, 2019, holding that Basham Law Group was

1 well qualified to act as Class Counsel in that case, and appointed Basham Law Group as Class
2 Counsel as a result.

3 27. In the California Wage & Hour case of *Timothy West v. FPI Management,*
4 *Inc.*, Sacramento County Superior Court Case No. Case No. 34-2018-00241586, the Court issued
5 an Order on June 5, 2020, holding that Basham Law Group was well qualified to act as Class
6 Counsel in that case, and appointed Basham Law Group as Class Counsel as a result.

7 28. In the California Wage & Hour case of *LaVonda Sanderson v. A Bright*
8 *Future, Inc.*, Sacramento County Superior Court Case No. Case No. 34-2019-00252816, the
9 Court issued an Order on November 25, 2020, holding that Basham Law Group was well
10 qualified to act as Class Counsel in that case, and appointed Basham Law Group as Class Counsel
11 as a result.

12 29. In the California Wage & Hour case of *Joel Wienholz v. Garton Tractors,*
13 *Inc.*, Solano County Superior Court Case No. Case No. FCS052526, the Court issued an Order on
14 December 17, 2020, holding that Basham Law Group was well qualified to act as Class Counsel
15 in that case, and appointed Basham Law Group as Class Counsel as a result

16 30. In the California Wage & Hour case of *Erik Hernandez v. PPG*
17 *Architectural Finishes, Inc.*, Sacramento County Superior Court Case No. Case No. 34-2018-
18 00246879, the Court issued an Order on May 25, 2021, holding that Basham Law Group was well
19 qualified to act as Class Counsel in that case, and appointed Basham Law Group as Class Counsel
20 as a result.

21 31. In the California Wage & Hour case of *Michael Christiansen et al v.*
22 *California Delta Mechanical, Inc.*, Sacramento County Superior Court Case No. Case No. 34-
23 2019-00269472, the Court issued an Order on November 10, 2021, holding that Basham Law
24 Group was well qualified to act as Class Counsel in that case, and appointed Basham Law Group
25 as Class Counsel as a result.

26 32. In the California Wage & Hour case of *Jeff Skinner v. U-Haul Co of*
27 *California*, Sacramento County Superior Court Case No. Case No. 34-2019-00252055, the Court
28 issued an Order on August 12, 2022, holding that Basham Law Group was well qualified to act as

1 Class Counsel in that case, and appointed Basham Law Group as Class Counsel as a result.

2 33. I have been asked to speak on employment law and wage and hour matters
3 and have done so for many years, including for the following groups: Professional Liability
4 Underwriting Society Northern California Chapter's Educational Seminars, Northern California
5 Human Resources Association's Annual Conference, the Sacramento Human Resource
6 Management Association's Legal and Legislative Conference, the Sacramento Human Resource
7 Management Association's monthly breakfast seminars, the California Rehabilitation
8 Association's Annual CEO Workshop, the Central Valley Human Resource Management
9 Association's monthly seminars, the California Employer Advisory Council and the Sacramento
10 County Law Library seminar series.

11 34. For every year from 2013 to the present, I have received an AV Preeminent
12 Peer Review Rating by Martindale-Hubbell for outstanding legal ability and professional ethics,
13 the highest rating for that organization.

14 35. The Gross Settlement Amount of \$50,000 reflects a fair, adequate, and
15 reasonable resolution of this case. In reaching this amount, the Parties took into consideration the
16 risks and benefits of continued litigation, generally, and for this case specifically. The Net
17 Settlement Amount in this Action is \$10,983.33, with an additional \$7,500.00 being paid to the
18 LWDA as civil penalties under PAGA. Plaintiff calculates his likely award should he and the
19 Class prevail at approximately \$47,550 plus interest for violation of Labor Code §2802 damages
20 (using \$30 per month for reimbursement) and PAGA penalties of \$37,410 (using \$100 penalty
21 per violation). Further, each Class Members' gross share of the Net Settlement is based on the
22 number of months worked, and paid-out on a pro-rata basis. (**Exhibit A ¶ III.C.1.**) The Net
23 Settlement Amount is fair and adequate based on the underlying facts and law.

24 36. This is a fair and appropriate method of distributing settlement funds for
25 claims under Labor Code §2802. The value of a reimbursement claim is necessarily connected to
26 the amount of personal resources devoted to an employer's purposes, and in this particular case,
27 those resources would increase based on the duration of employment.

28 37. In this case, Plaintiff submitted her PAGA letter to the LWDA and served

1 the letter on Defendant by certified mail on May 8, 2023. Plaintiff filed his Class and PAGA
2 First Amended Complaint with the Court on July 12, 2023, more than 65 days after submitting
3 the PAGA letter. Accordingly, Plaintiff has satisfied all requirements set forth in PAGA. **A true**
4 **and correct copy of the May 8, 2023 PAGA letter to the LWDA and Defendant is attached**
5 **hereto as Exhibit d and incorporated herein by reference.**

6 38. Here, the proposed PAGA penalty of \$10,000.00 is reasonable given
7 Defendant's defenses, the number of aggrieved PAGA employees (33), Defendant's correction of
8 the issue, and the challenge, risk, costs, and uncertainty of litigating and proving PAGA
9 violations. Plaintiff calculates his likely PAGA award should he and the 33 PAGA members
10 prevail at approximately \$37,410 (using \$100 penalty per violation). Further, the aggrieved
11 employees suffered no known injury due to Defendant's alleged failure to reimburse, and made
12 no complaint to Defendant for its failure to reimburse for work related personal cell phone use
13 until the filing of Plaintiff's Complaint. Further, any alleged Labor Code section 2802 violations
14 were corrected by Defendant by October 31, 2023. Additionally, on February 20, 2024,
15 Plaintiff's Counsel submitted the fully executed Settlement Agreement to the LWDA online, and
16 the LWDA has not objected to the settlement or responded to the settlement submission in any
17 way.

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19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct. Dated on September 9, 2024, in Sacramento, California.

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23 GARY R. BASHAM

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EXHIBIT A

CLASS ACTION & PAGA SETTLEMENT AGREEMENT

This Class Action & PAGA Settlement Agreement ("Agreement") is made by and between Plaintiff Kenneth Murphy ("Plaintiff") and Stinson Enterprises, Inc. ("Defendant"). Plaintiff and Defendant collectively are referred to in this Agreement as the "Parties."

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. "Action" means the civil action titled *Murphy v. Stinson Enterprises, Inc. et al.*, currently pending in Stanislaus County Superior Court, Case No. CV-23-002345.
- B. "Agreement," "Settlement," or "Settlement Agreement" means this Settlement Agreement.
- C. "Class" means all individuals who worked for Defendant as sales employees in California during the Class Period.
- D. "Class Counsel" means Gary Basham of Basham Law Group.
- E. "Class Counsel Fees Payment" means the amount of attorneys' fees to be paid to Class Counsel as approved by the Court to compensate him for his legal work in connection with the Action, including his pre-filing investigation, his filing of the Action, all related litigation activities, all Settlement work, and all post-Settlement compliance procedures.
- F. "Class Counsel Litigation Expenses Payment" means the amount to be paid to Class Counsel as approved by the Court for litigation expenses as billed to his client in connection with this Action.
- G. "Class Data" means, for each Class Member, their (1) name; (2) last-known mailing address; (3) Social Security number; (4) employee identification number; and (5) the number of Workmonths employed during the Class Period as a Class Member.
- H. "Class Members" are members of the Class who do not opt out of the Settlement and who released the claims that are the subject of this Agreement.
- I. "Class Notice" means the Notice of Pendency of Class Action Settlement and Hearing Date for Final Court Approval.
- J. "Class Notice Packet" means the Class Notice to be provided to the Class Members by the Settlement Administrator, attached hereto as Exhibit A.
- K. "Class Period" means the period of time from May 1, 2019 through October 31, 2023.

- L. "Class Representative Service Payment" means the service payment of not more than \$5,000 made to Plaintiff as Class Representative in order to compensate him for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant's expenses in the event that he was unsuccessful in the prosecution of the Action, and for participating in the mediation and settlement negotiations resulting in the settlement of the Action.
- M. "Court" means the Superior Court of California, County of Stanislaus.
- N. "Defendant" means Stinson Enterprises, Inc.
- O. "Defendant's Counsel" means Laura A. Wolfe of McCormick Barstow LLP.
- P. "Effective Date" means the date by which all of the following have occurred:
1. This Agreement is approved by the Court; and
 2. The Judgment becomes Final as defined in Section I(R) of this Agreement.
- Q. "Election Not to Participate in Settlement" means the written request by a Class Member to exclude themselves from the Settlement submitted in accordance with the instructions in the Class Notice.
- R. "Final" means the last of the following dates, as applicable:
1. If no objection to the Settlement is made, the date the Judgment is entered.
 2. If an objection to the Settlement is made and Judgment is entered, but no appeal is filed, the last date on which a notice of appeal from the Judgment may be filed and none is filed.
 3. If Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.
- S. "Final Approval Hearing" means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- T. "Gross Settlement Amount" means Fifty Thousand Dollars (\$50,000) to be paid by Defendant as provided by this Agreement. This amount is an all-in amount without any reversion to Defendant and shall be inclusive of all payments contemplated in this resolution in this Agreement.
- U. "Judgment" means the Final Approval Order and Judgment entered by the Court.
- V. "LWDA" means the California Labor and Workforce Development Agency.

- W. "LWDA Payment" means the amount which shall be paid to the LWDA under the Settlement Agreement.
- X. "Net Settlement Amount" means the Gross Settlement Amount less the Court-approved amounts attributed to the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment to Plaintiff, Settlement Administration Expenses, the LWDA Payment, and the employee portion of the PAGA Settlement.
- Y. "Non-Participating Class Member" means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- Z. "PAGA Period" means the period between May 1, 2022 through October 31, 2023.
- AA. "PAGA Members" means all current and former non-exempt employees of Defendant who were employed by Defendant in the state of California at any time during the PAGA Period.
- BB. "PAGA Settlement" means the amount of the Gross Settlement Amount that the Parties have agreed to allocate in order to settle the claims arising under the Private Attorneys General Act of 2004 ("PAGA"). The Parties have agreed that the PAGA Settlement shall consist of a total of Ten Thousand Dollars and Zero Cents (\$10,000.00), with 75% of this amount (\$7,500.00) paid to the California Labor and Workforce Development Agency in accordance with Labor Code sections 2698 *et seq.*, and 25% (\$2,500.00) of this amount distributed to PAGA Members. PAGA Members will receive payment from the employee portion of the PAGA Settlement regardless of their decision to participate in the class action if the PAGA Settlement is approved by the Court.
- CC. "Preliminary Approval of the Settlement" means the Court's Preliminary Approval Order.
- DD. "Released Claims" means all claims that were or could have been asserted based on the Class/PAGA facts alleged in the First Amended Complaint by Plaintiff and Class Members, including all claims under California Labor Code section 2802 as alleged in the Action, for unreimbursed business expenses for the Class/PAGA members' use of their personal cell phones for Defendant's business purposes, penalties under the Private Attorneys General Act sections 2698, *et seq.*, and violations of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*) relating to the Class/PAGA members' use of their personal cell phones for Defendant's business purposes. The res judicata effect of the Judgment will be the same as that of the Release.
- EE. "Released Parties" means Defendant, together with all of Defendant's past and present parent, subsidiary, affiliate, predecessor or successor, and all agents, employees (current and former), officers, directors, insurers and attorneys.

- FF. "Settlement" means the disposition of the Action and all related claims effectuated by this Agreement.
- GG. "Settlement Administrator" means the administrator proposed by the Parties (ILYM Group, Inc.) and appointed by the Court to administer the Settlement. The determination of the Settlement Administrator will be by a not to exceed bid of \$5,350.00.
- HH. "Settlement Share" means each Participating Class Member's share of the Net Settlement Amount as provided by this Agreement.
- II. "Workmonth" means any portion of a calendar month during which a Class Member was employed during the Class Period.

II. RECITALS

- A. On April 28, 2023, Plaintiff filed a Class Action Complaint on behalf of himself and other Class Members against Defendant in the Superior Court of the State of California, County of Stanislaus. In addition to individual causes of action, Plaintiff asserted Class claims alleging that Defendant (1) failed to reimburse business expenses in violation of Labor Code section 2802 and (2) committed an unfair business practice under the Business and Professions Code based on the violation of Labor Code section 2802.
- B. Plaintiff submitted a letter to the LWDA on May 8, 2023 regarding the allegations above and Plaintiff's intention to file a civil action under the Private Attorneys General Act, Cal. Labor Code §§ 2689 *et seq.* ("PAGA") unless the LWDA elected to investigate the allegations on its own. The LWDA did not indicate an intention to investigate the allegations on its own within the applicable statutory time period.
- C. On July 12, 2023, following the expiration of the PAGA notice period, Plaintiff filed a First Amended Complaint adding a representative action under the PAGA base on Defendant's violation of Labor Code section 2802.
- D. On August 8, 2023, Defendant filed a general denial along with affirmative defenses in response to the First Amended Complaint.
- E. On December 12, 2023, the Parties participated in mediation with Laurie Saldaña, a respected mediator in employment law. At the mediation, the Parties agreed to resolve all claims asserted and executed a Memorandum of Understanding, which serves as the basis for this Agreement. At mediation, the Parties determined that the total number of putative class members was 63 current and former employees of Defendant.
- F. Prior to the mediation, the Parties conducted significant investigation and informal discovery of the facts and law related to the allegations in the Action. Defendant produced Plaintiff's personnel file, wage records, and documents relating to their policies, practices, and procedures regarding reimbursement of business expenses.

As part of Defendant's production, Plaintiff reviewed records relating to the size and scope of the Class Members, as well as data permitting Plaintiff to understand the number of Workmonths in the PAGA and Class Periods. The Parties agree that the above-described investigation and evaluations, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respect Parties' positions and to compromise the issues on a fair and equitable basis.

- G. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through class certification, trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations, including a formal mediation on December 12, 2023. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
- H. **Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- I. **Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Class Action is not appropriate for class or representative treatment. Defendant asserts a number of defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiff can serve as an adequate Class Representative. There has been no determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is Fifty thousand and Zero Dollars (\$50,000.00). This amount is all-inclusive of all payments contemplated in this resolution. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant. As the payments hereunder represent claims for reimbursement for business expenses and penalties related thereto, they are not wages and therefore employer payroll taxes do not apply.
- B. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:
1. **To Plaintiff:** In addition to his Settlement Share and portion of the PAGA Settlement, Plaintiff will apply to the Court for an award of not more than \$5,000 as a Class Representative Service Payment. Defendant will not oppose a Class Representative Service Payment in this amount. The Settlement Administrator will pay the Class Representative Service Payment approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Service Payment for less than the amounts set forth above, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Plaintiff agrees that he alone is responsible for any and all tax consequences arising from payments to Plaintiff under this Agreement.
 2. **To Class Counsel:** Class Counsel will separately apply to the Court for the Class Counsel Fees Payment, which will not exceed one-third (1/3) of the Gross Settlement Amount (\$16,666.67). Class Counsel will also be allowed to apply for Class Counsel Litigation Expenses Payment in an amount not to exceed actual expenses incurred in bringing this Action as documented in Class Counsel's billing records up to \$4,500.00. Defendant will not oppose these requests for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment consistent with this Agreement. The Settlement Administrator will pay the amount approved by the Court for the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment of less than one-third of the Gross Settlement Amount, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. The payment of the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment shall be made to Basham Law Group in the amount approved by the Court. The Parties agree that, other than the above Court-approved Class Counsel Fees Payment, and Class Counsel Litigation Expenses Payment, each of the Parties, including all Class

Members, shall bear their own fees and costs, including, but not limited to, those related to the investigation, filing, prosecution, or Settlement of the Action; the negotiation, execution, or implementation of this Agreement; and/or the process of obtaining, administering, or challenging a Preliminary Approval Order and/or Final Approval Order and Judgment. In the event that the Court reduces or does not approve the requested Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment, Plaintiff and Class Counsel shall not have the right to modify or revoke the Settlement, or otherwise attempt to avoid enforcement of this Agreement, and the Settlement will remain binding. Class Counsel agrees that Class Counsel alone is responsible for any and all tax consequences arising from payments to Class Counsel under this Agreement.

3. **To LWDA.** The Parties will seek approval from the Court for allocating \$10,000.00 of the Gross Settlement Amount as the PAGA Settlement.
4. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court ("Settlement Administration Expenses") up to \$5,350.00.
5. **To Participating Class Members and PAGA Members.** Payments to the Participating Class Members and PAGA members as outlined in Section III(C) below.

C. **Payment of Settlement Shares and PAGA Settlement.** The Settlement Administrator shall pay to each Participating Class Member their Settlement Share and each PAGA Member their portion of the PAGA Settlement as follows:

1. **Calculation.** The Settlement Share for each Participating Class Member will be calculated by: (a) dividing the Net Settlement Amount, by the total number of Workmonths for all Participating Class Members during the Class Period; and (b) multiplying the result by each individual Participating Class Member's total number of Workmonths during the Class Period. The PAGA Settlement for each PAGA Member shall be distributed to PAGA Members by (a) dividing the 25% of the employee share of the PAGA Settlement by the total number of Workmonths for all PAGA Members during the PAGA Period; and (b) multiplying the result by each individual PAGA Member's total number of Workmonths during the PAGA Period. PAGA Members may not elect not to participate in the PAGA portion of the Settlement, even if they request to be excluded from the Class Settlement.
2. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Settlement Share, and their Election Not to Participate in Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Settlement Shares will

remain a part of the applicable Net Settlement Amount and be distributed to the remaining Participating Class Members.

- D. **Appointment of Settlement Administrator.** In connection with the Motion for Preliminary Approval, the Parties will propose a Settlement Administrator to distribute Settlement Shares and other payments due under the Settlement; and otherwise administer the Settlement. The Settlement Administrator, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Elections Not to Participate in Settlement; calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; printing and providing any IRS 1099 forms as required pursuant to applicable law; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member's Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement.

The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

E. **Procedure for Approving Settlement.**

1. **Motion for Preliminary Approval of Settlement by the Court.**
 - a. After Execution of this Settlement Agreement, Plaintiff will file a Preliminary Approval Motion (the "Motion for Preliminary Approval") with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice. The Motion for Preliminary Approval shall be filed notwithstanding any new legal developments regarding the claims being litigated in the Action. The Motion for Preliminary Approval shall be filed within sixty (60) days of Execution of this Settlement Agreement.
 - b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit a Preliminary Approval Order.

- c. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval.
- 2. **Notice to Class Members.** After the Court enters a Preliminary Approval Order, every Class Member will be sent the Class Notice Packet (which will include the Class Notice completed to reflect the Preliminary Approval Order and showing the Class Member's Settlement Share) as follows:
 - a. No later than 14 days after the Court enters a Preliminary Approval Order, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's Class Data. If any or all of the Class Data is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in section III.E.2.c., or pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration and shall not be used for any other purpose by Class Counsel.
 - b. Using best efforts to mail it as soon as possible, and in no event later than 14 days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
 - c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and no longer than ten (10) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendant to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These

reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections received.
 - e. Not later than 10 days before the date by which the Plaintiff files the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Elections Not to Participate in Settlement it received (including the numbers of valid and deficient Elections) and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.
 - f. If ordered by the Court, the Settlement Administrator shall make available to class members on a website all documents required by the Court to be made available to the class members, which will be disclosed to the class members to enable access.
3. **Objections to Settlement; Disputes as to Workmonths Allocated to Class Members; Objections to Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and objections to Class Counsel Fees Payment and Class Counsel Expenses Payment. Participating Class Members may also submit disputes as to Workmonths allocated to them and Elections Not to Participate in Settlement pursuant to the following procedures:
- a. **Objections to Settlement and Disputes as to Workmonths.** The Class Notice will provide that only Participating Class Members who wish to object to the Settlement must submit to the Settlement Administrator with copies to the Parties' Counsel, not later than 45 days after the Settlement Administrator mails the Class Notice Packets, written objections to the Settlement setting forth the grounds for the objection. A Participating Class Member who does not submit a written objection in the manner and by the deadline

specified above will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. Non-Participating Class Members shall have no ability to comment on or object to the Settlement.

Each Participating Class Member and PAGA Member shall also have 45 days from the date of mailing the Class Notice Packet in which to dispute the number of Workmonths the Class Notice allocates to them during the Class Period. Any dispute as to this allocation shall be resolved by the Settlement Administrator. Any Notice of Dispute shall be directed to the Settlement Administrator.

- b. **Election Not to Participate in Settlement.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator not later than 45 days after the Settlement Administrator mails the Class Notice Packets, a signed Election Not to Participate in Settlement. To be valid, an Election Not to Participate must be timely and must comply with the instructions in the Class Notice. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment. Defendant will remain free to contest any claim brought by the Non-Participating Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. A Class Member who does not complete and mail a timely Election Not to Participate in Settlement in the manner and by the deadline specified above will automatically become a Participating Class Member and be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Class, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit an Election Not to Participate in Settlement shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement.

All Participating Class Members who do not submit a valid and timely Election Not to Participate in Settlement will receive a Settlement Share, without the need to file a claim form, and will be bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims by the Participating Class Members set forth in this Agreement.

- c. **Report.** Not later than 10 days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administrator will provide the Parties with a complete and accurate list of all Participating Class Members and all Non-Participating Class Members.
- 4. **Right of Defendant to Reject Settlement.** If ten percent (10%) or more of the Class Members timely submit valid Elections Not to Participate in Settlement, Defendant will have the right, but not the obligation, to void the Settlement and the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendant will pay the Settlement Administration Expenses incurred as of the date that Defendant exercises the right to void the Settlement. Defendant will notify Class Counsel and the Court whether it is exercising this right to void not later than thirty (30) days after the expiration of the period to submit valid Elections Not to Participate in Settlement.
- 5. **No Solicitation.** The Parties and their counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement. If a Class Member submits an Election Not to Participate in Settlement, Class Counsel will not solicit, represent, or otherwise encourage that Non-Participating Class Member to participate in separate litigation against Defendant.
- 6. **Additional Briefing and Final Approval.**
 - a. Class Counsel will file with the Court their respective motions for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments no later than the date the Plaintiff files the Motion for Final Approval, and the application will be scheduled to be heard by the Court at the Final Approval Hearing. As long as the requests for fees and expenses are consistent with the terms of this Agreement, Defendant, Class Counsel and any other counsel for the Parties will not oppose these requests.
 - b. Not later than 16 court days before the Final Approval Hearing, the Plaintiff will file with the Court a motion for final approval of the Settlement, the PAGA Payment, the service awards and payment of the Settlement Administration Expenses.
 - c. If any opposition is filed, then not later than 5 court days before the Final Approval Hearing, both Parties may file a reply in support of

the motion for final approval of the Settlement, the PAGA payment, and payment of the Settlement Administration Expenses; and Plaintiff and Class Counsel may also file a reply in support of their requests for the Class Representative Service Payments, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.

- d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiff and Class Counsel for the PAGA payment, Class Representative Service Payment, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this paragraph.
 - e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present a Judgment for the Court's approval. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.
7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class Members who did not timely submit an objection to the Settlement, 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, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The Judgment therefore will become non-appealable 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 becomes Final.
8. **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, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members, the

definitions of the Class Members, or the definition of the Class Period), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court not later than fourteen days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. In the event that the terms or conditions of the Parties' Settlement Agreement are materially modified by any court, any party in its sole discretion to be exercised within fourteen (14) days after such a material modification may declare this Agreement null and void. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payment or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.

9. **Timing of Provision of Settlement Shares and Other Payments.** Defendant will fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendant shall fund the Gross Settlement Amount within thirty (30) days of the Effective Date. Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will pay to Participating Class Members their Settlement Shares and their share of the PAGA Settlement; to Plaintiff, the Class Representative Service Payment; to Class Counsel, the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; to the LWDA, the LWDA Payment; and to the Settlement Administrator, the Settlement Administration Expenses.
10. **Uncashed Settlement Share Checks.** A Participating Class Member must cash or deposit his or her Settlement Share check within 90 days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Participating Class Member at his or her correct address. If a Participating Class Member's Settlement Share check is not cashed within 60 days after its last mailing to the Participating Class Member, the Settlement Administrator will send the Participating Class Member a notice informing him or her that unless the check is cashed in the next 30 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 30-day period after this notice, the funds from such uncashed checks will be paid to California Rural Legal Assistance, a 501(c)(3) non-profit organization that provides legal assistance to low-income individuals and communities, as a *cy pres* recipient. In the event that funds from uncashed checks are to be distributed to the *cy pres*

beneficiary, Class Counsel shall file a report within 30 days after the check-cashing deadline that details the total amount of the Net Settlement Amount that was actually paid to Participating Class Members and the total amount of uncashed checks.

11. **Final Report by Settlement Administrator to Court.** Within ten days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will serve on the Parties and file with the Court a declaration providing a final report on the disbursements of all funds from the Gross Settlement Amount.
- F. **Release of Claims.** As of the Effective Date, in exchange for the consideration set forth in this Agreement, Plaintiff and the Participating Class Members release the Released Parties from the Released Claims for the Class Period.
- G. **PAGA Release.** As of the Effective Date and upon Defendant fully funding the Settlement, all PAGA Members employed in the PAGA Period, and the State of California, shall be deemed to have fully, finally, and forever released, relinquished and will release the Released Parties from the Released Claims arising under the PAGA during the PAGA Period.
- H. **Class Counsel.** As of the date the Judgment becomes Final, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against Defendant arising from or related to the Class/PAGA Action.
- I. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments and shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacation, holiday pay, retirement plans, 401(k), bonuses, etc.). The Parties agree that any payments paid to Plaintiff and Participating Class Members under the terms of this Agreement do not represent any modification of Plaintiff's or Participating Class Member's previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.
- J. **Limitation on Public Statements about Settlement.** Plaintiff and Class Counsel represent that they have not and will not issue any press, publications, or other media releases about the Settlement (including, but not necessarily limited to advertising or marketing materials or on social media) or have any communication with the press or media or anyone else regarding the Settlement. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision also does not limit Class Counsel from complying with ethical obligations or from the Claims Administrator from posting settlement and court-filed documents on its website for viewing by Class Members as ordered by the Court. This provision also does not prohibit Defendant from making the legally

required disclosures of the Settlement necessary to comply with all federal and state laws governing publicly traded companies.

K. Miscellaneous Terms.

1. No Admission of Liability or Class Certification for Other Purposes.

- a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiff that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement).
- b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.
- c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.

2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it

will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

3. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement.
4. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
5. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives.
6. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
7. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
8. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
9. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
10. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other

purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule.

11. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
12. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the second business day after emailing or third business day after mailing by United States mail, addressed as follows:

To Plaintiff:

Gary R. Basham
Basham Law Group
8801 Folsom Blvd. Suite 280
Sacramento, California 95826
Tel: (916) 282-0841
Fax: (916) 266-7478
Email: gary@bashamlawgroup.com

To Defendant:

Laura A. Wolfe
McCormick, Barstow, Sheppard,
Wayte & Carruth LLP
7647 North Fresno Street
Fresno, California 93720
Tel: (559) 433-1300
Fax: (559) 433-2300
Email: laura.wolfe@mccormickbarstow.com

13. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. 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 signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
14. **Stay of Litigation.** The Parties agree that upon the signing of this Agreement by the Parties hereto the stay of the continuing litigation of this Action shall remain in effect and the time to bring this Action under CCP § 583.310 to trial shall be extended pending the outcome of the settlement process for the time period of the stay.

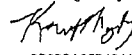
15. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action to ensure the continuing implementation of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 1/30/2024

Kenneth Murphy

DocuSigned by:

CB08BA958484401

Dated: _____

Stinson Enterprises, Inc.

By: _____

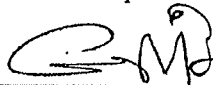
Kevin Stinson, Vice President

APPROVED AS TO FORM ONLY:

Dated: 1-31-24

Basham Law Group

By: _____



Gary R. Basham
Attorney for Plaintiffs Kenneth Murphy and
Class/PAGA Members

Dated: _____

McCormick, Barstow, Sheppard, Wayte & Carruth LLP

By: _____

Laura A. Wolfe
Attorneys for Defendant

15. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action to ensure the continuing implementation of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: _____ Kenneth Murphy

Dated: 2/5/2024

Stinson Enterprises, Inc.

By: _____

Kevin Stinson, Vice President

APPROVED AS TO FORM ONLY:

Dated: _____

Basham Law Group

By: _____

Gary R. Basham
Attorney for Plaintiffs Kenneth Murphy and
Class/PAGA Members

Dated: 2/5/2024

McCormick, Barstow, Sheppard, Wayte & Carruth LLP

By: _____

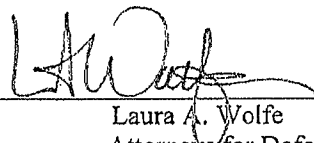

Laura A. Wolfe
Attorneys for Defendant

EXHIBIT A

[CLASS MEMBER NAME and ADDRESS]

**[CLASS MEMBER NAME], PLEASE READ THIS NOTICE CAREFULLY.
IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.**

*This is **not** a solicitation from a lawyer. A court authorized this notice.*

NOTICE OF CLASS ACTION SETTLEMENT

***Kenneth Murphy ("Plaintiff") v. Stinson Enterprises, Inc. ("Defendant");
Stanislaus County Superior Court Case No. CV-23-002345***

If you were employed in California by Stinson Enterprises, Inc., as a sales employee at any time from May 1, 2019 through October 31, 2023, a proposed class action settlement may affect your rights and you may be entitled to money under the proposed Settlement.

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

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

- You are receiving this Notice because Defendant's records show that you are in the Proposed Settlement Class. Your estimated Net Settlement Award is [INSERT ESTIMATED NET SETTLEMENT AWARD].
- Plaintiff alleges that Defendant failed to reimburse members of the Settlement Class for requiring sales employees to use their personal cell phones for Defendant's business purposes without any reimbursement, restitution or compensation, and thereby (1) violated California Labor Code section 2802 and (2) committed an unfair business practice under the California Business and Professions Code. Plaintiff seeks to recover (1) the amount of expense incurred by members of the Settlement Class, (2) penalties under the California Private Attorneys General Act, (3) reasonable attorneys' fees incurred, and (4) costs incurred.
- Defendant strongly denies Plaintiff's claims and asserts that it has complied with all of its legal obligations under the California Labor Code and Industrial Welfare Commission Wage Orders. The Settlement is not an admission by Defendant of any wrongdoing, and the Court has not made any findings of wrongdoing or liability.
- The Parties in this action disagree as to the probable outcome of the lawsuit with respect to liability and damages if it were not settled. Although Plaintiff contends his claims have merit, he recognizes that litigating involves risk, and that he may not prevail on all or some of his claims. Likewise, while Defendant contends it has strong defenses against Plaintiff's claims, it recognizes risks involved with litigation. The Parties engaged in mediation, and, recognizing the risks and costs inherent in litigation, reached a proposed Settlement of the claims asserted in the lawsuit.
- On [INSERT PRELIMINARY APPROVAL DATE] the Court granted preliminary approval of the proposed Settlement. This proposed Settlement is the result of good faith, arm's-length negotiations between the Parties, through their respective attorneys. The Court has expressed no opinion on the merits of Plaintiff's claims or Defendant's defenses.

- You have several options available to you:

PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT	<u>YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT.</u> By doing nothing, you <u>WILL</u> receive a share of the Settlement proceeds if the proposed Settlement is finally approved, and you will give up any rights to sue Defendant separately regarding certain claims as described below in this Notice. Your estimated Settlement Award is [INSERT ESTIMATED SETTLEMENT AWARD]. Your estimated Settlement Award is based on Defendant's records that show you worked [INSERT WORK MONTHS] months for Defendant during the relevant time period.
ASK TO BE EXCLUDED (OPT OUT)	If you timely and validly request in writing to be excluded from the proposed Settlement, you <u>WILL NOT</u> receive a share of the Settlement proceeds (except for your share of the PAGA Payment), but you will keep any rights you may have to sue Defendant separately about the same legal claims in this lawsuit. Your written Request for Exclusion letter must be postmarked by _____.
OBJECT	You may object to the Settlement if you did not ask to be excluded from the Settlement. If you timely submit in writing an objection to the Settlement and the Settlement is nonetheless granted final approval, you <u>WILL</u> (i) receive a share of the Settlement proceeds and (ii) release legal claims against Defendant. Your written notice of intent to object must be postmarked by _____.
DISPUTE YOUR SETTLEMENT AWARD	You may dispute Defendant's records of number of work months worked during the Class Period by submitting information to the Settlement Administrator, not later than _____. The Settlement Administrator shall make the final decision based on the information presented by you and Defendant.

Your options are explained further in this notice.

1. Why did I get this notice?

The Court has granted preliminary approval of the Settlement of the class action brought by Plaintiff on behalf of all persons employed in California by Stinson Enterprises, Inc., as sales employees at any time from May 1, 2019 through October 31, 2023. You have received this notice because Defendant's records indicate that you are a Class Member.

2. What is this lawsuit about?

On April 28, 2023, Plaintiff filed a Class Action Complaint on behalf of himself and other Class Members against Defendant in the Superior Court of the State of California, County of Stanislaus. In addition to individual causes of action, Plaintiff asserted Class claims alleging that Defendant (1) failed to reimburse business expenses in violation of Labor Code section 2802 based on Defendant requiring sales employees to use their personal cell phones for Defendant's business purposes without any reimbursement, restitution or compensation, and (2) committed an unfair business practice under the Business and Professions Code based on the violation of Labor Code section 2802. On July 12, 2023, Plaintiff filed a First Amended Complaint adding a representative action under Private Attorneys General Act, Cal. Labor Code §§ 2689 *et seq.* ("PAGA") based on Defendant's violation of Labor Code section 2802.

Defendant strongly denies these allegations and contends that it has fully complied with applicable California law at all relevant times. Defendant denies that Plaintiff's claims were appropriate for a class action or a representative action and further denies that there was any merit to the claims.

3. Has the Court decided who is right?

No. The Court has not made a decision regarding the merits of Plaintiff's allegations or Defendant's defenses.

4. Why did this case settle?

The Parties in this action disagree as to the probable outcome of the action with respect to liability, damages, and penalties if it were not settled. Although Plaintiff contends his claims and those of the Class have merit, Plaintiff recognizes that litigating involves risk, and that he may not prevail on all or some of his claims. Likewise, while Defendant contends it has strong defenses against Plaintiff's claims, it recognizes risks involved with litigation. The Parties engaged in mediation, and, recognizing the risks and costs inherent in litigation, reached a proposed Settlement of the claims asserted in the lawsuit.

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

The gross settlement amount is \$50,000.00. Under the proposed Settlement, the following amounts will be deducted before any payments are made to settlement class members, subject to final approval by the Court:

- Attorneys' Fees – up to \$16,666.67.
- Costs of Suit – up to \$4,500.00.
- Settlement Administration Expenses – up to \$5,350.00.
- Service Payment to Class Representative: – up to \$5,000.00.

After these deductions, a net settlement fund of approximately \$18,433.33 will remain. \$10,000.00 of the net settlement fund will be allocated to Plaintiff's claim brought under the Private Attorneys General Act, and, as provided by law, 75% of this amount will be paid to the California Labor and Workforce Development Agency and the remaining 25% included within the net settlement fund available for distribution to PAGA members. Each Participating Class Member will share pro-rata in the net settlement fund on a pro rata basis calculated as his or her number of months worked during the Class Period as a percentage of all Class Members' months worked during the Class Period. Specifically, each Class Member shall receive a credit of one work month for each month (or portion thereof) during which

he or she was on the payroll from May 1, 2019 through October 31, 2023. Each individual Settlement Amount shall be allocated to reimbursement of expenses, penalties, and interest, to be reported on an IRS form 1099.

6. What do I have to do to receive a share of the proposed Settlement?

Nothing. If you wish to receive a payment under the terms of this proposed Settlement, you do **not** have to do anything. However, it is important that if your address has changed, you give your current mailing address to the Settlement Administrator in order to ensure you receive your share of the Settlement proceeds if the proposed Settlement is finally approved. You will be covered by the release summarized in Section 8, below.

7. How was my share calculated?

You received a credit of one work month for each month (or portion thereof) during which you were on the payroll from May 1, 2019 through October 31, 2023.

Should you choose to participate in the Settlement, your settlement check must be cashed within 90 days from the date of the check. Checks remaining uncashed for more than 90 days after issuance will expire and become non-negotiable, and the funds from such uncashed checks will be paid to California Rural Legal Assistance, a 501(c)(3) non-profit organization that provides legal assistance to low-income individuals and communities.

8. What rights am I giving up?

As part of the Settlement, Plaintiff and each member of the Settlement Class (excluding those who elect to exclude themselves from the class settlement) will fully release and discharge Defendant, together with all of Defendant's past and present parent, subsidiary, affiliate, predecessor or successor, and all agents, employees (current and former), officers, directors, insurers and attorneys. The Release covers all claims that were or could have been asserted based on the Class/PAGA facts alleged in the First Amended Complaint by Plaintiff and Class Members, including all claims under California Labor Code section 2802 as alleged in the Action, for unreimbursed business expenses for the Class/PAGA members' use of their personal cell phones for Defendant's business purposes, penalties under the Private Attorneys General Act sections 2698, *et seq.*, and violations of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*) relating to the Class/PAGA members' use of their personal cell phones for Defendant's business purposes.

9. What are PAGA Penalties?

PAGA Penalties: \$10,000.00 of the Net Settlement Amount is allocated to PAGA civil penalties ("PAGA Penalties"), subject to Court approval. By law, 75% of the PAGA Penalties will be paid to the California Labor & Workforce Development Agency and 25% of the PAGA Penalties will be distributed to the PAGA Members. Under PAGA, the State of California deputizes private attorney generals, such as Plaintiff, to prosecute claims against employers for alleged violations of the Labor Code, and all employees are entitled to share in the 25% of the penalties that would otherwise be recoverable by the State if it directly prosecuted claims against Defendant for the alleged Labor Code violations. No claims are waived by accepting PAGA penalties and no one has a right to object to, or seek exclusion from, the PAGA component of this Settlement.

10. What if I do not wish to be part of the proposed Settlement?

Anyone not wishing to participate in the proposed Settlement may exclude himself or herself (“opt out”) by completing, signing and mailing a Request for Exclusion letter by [INSERT REPOSE DEADLINE] to the Settlement Administrator as follows.

<u>Settlement Administrator:</u> INSERT INSERT INSERT INSERT	
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If your Request for Exclusion is postmarked after [INSERT REPOSE DEADLINE], it will be rejected, and you will be a Class Member and be bound by the Settlement terms.

To be valid, any Request for Exclusion must: (i) set forth the name, address, telephone number and last four digits of the Social Security Number of the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included in the Settlement; and (v) be faxed or postmarked on or before the [INSERT REPOSE DEADLINE]. As noted, even if you request exclusion, you will remain part of the PAGA penalty part of the Settlement.

Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Settlement Class Member and will not receive any payment as part of this proposed Settlement, except for his or her portion of the PAGA Payment, if applicable. Such persons will retain any rights to sue Defendant separately about the claims made in this lawsuit.

11. What if I have an objection?

Any objection to the proposed Settlement must be in writing and mailed to the Settlement Administrator (identified above) by [INSERT REPOSE DEADLINE]. To be valid, any objection must include the Class Member’s name and provide each specific reason in support of the objection and be postmarked by the [INSERT REPOSE DEADLINE] and mailed to the Settlement Administrator at the address specified above. Class Members need not include legal arguments for their written objections to be considered. Class Members may speak at the Final Approval Hearing whether or not they have complied with the above written objection procedures. Due to the COVID-19 pandemic the Court may not be open to the public for the Final Approval Hearing. If you wish to appear remotely to object, you should contact the Clerk of the Court two days in advance of the hearing for instructions on how to log into the Court’s videoconferencing system.

12. Do I need a lawyer? Who are the lawyers in this case?

You do not need to hire your own lawyer, because Class Counsel is working on your behalf. However, if you want your own lawyer, including to make any objections to the proposed Settlement, you are free to hire one at your own expense. The below are Class Counsel and Defendant’s Counsel in this case:

<u>Class Counsel:</u>	<u>Defendant's Counsel:</u>
Gary Basham, Esq. Basham Law Group 8801 Folsom Blvd., 280 Sacramento, CA 95826 Phone: (916) 282-0841 Fax: (916) 266-7478 Email: gary@bashamlawgroup.com	Laura A. Wolfe, Esq. McCormick Barstow LLP 7647 North Fresno Street Fresno, California 93720 Phone: (559) 433-2160 (559) 433-2300 Fax: (559) 433-2300 Email: Laura.Wolfe@mccormickbarstow.com

13. What happens next in the case?

The proposed Settlement has only been preliminarily approved. The Court will hold a hearing in Dept. ___ of the Stanislaus County Superior Court, _____ on _____, 2024, at XX Pacific Time, to consider any objections and determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the settlement of the class action claim, PAGA representative claim, and also Class Counsel's request for attorneys' fees and costs, the costs of settlement administration, and the proposed service award. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

14. How can I receive more information?

This Notice is a summary of the basic terms of the proposed Settlement. For the precise terms and conditions of the proposed Settlement, you may review the detailed "Class Action & PAGA Settlement Agreement" on file with the Clerk of the Court as well as the pleadings and other records in this litigation at the Office of the Clerk of the Stanislaus County Superior Court, 801 10th Street, Modesto, CA 95354. You may also ask Class Counsel to send you a copy of the Class Action & PAGA Settlement Agreement or other pleadings. For further information, you may also call or email Class Counsel (listed above) or the Settlement Administrator (listed above). ADD ILYM Website Info.

Please do not telephone the Court, the Office of the Clerk, Defendant or Defendant's counsel for information regarding this proposed Settlement.

Questions? Call the Settlement Administrator toll free at [phone number]

EXHIBIT B

Dept. 23

John Freeland
JUDGE

MURPHY, KENNETH vs
STINSON ENTERPRISES INC

STANISLAUS COUNTY
SUPERIOR COURT
STATE OF
CALIFORNIA

5/14/2024

Motion: Other Pre-Disposition

Nicole Nelson
Clerk

Case No. CV-23-002354

APPEARANCES:

No appearance by Plaintiff(s)/Petitioner(s).

No appearance by Defendant(s)/Respondent(s).

This matter is regularly called for hearing.

There being no request for a hearing, the Court confirms the tentative ruling as follows:

Plaintiff's Motion for Preliminary Approval of Class Action Settlement – **GRANTED, and unopposed.**

The Court finds the proposed settlement is within the range of reasonableness and deemed to be presumptively valid, subject to any objections that may be heard at the final fairness hearing and final approval by this Court.

Good cause appearing to the satisfaction of the Court, the class is certified for settlement purposes only in accordance with Cal. Rules of Ct., rule 3.769(c). The class counsel, class representative, and claims administrator are hereby preliminarily approved and appointed as set forth in the motion.

The Court sets the following deadlines relative to this matter:

5-28-24	Defendant shall provide Class List and Data Report to Administrator
6-11-24	Administrator shall mail Class Notice to Class Members.
7-26-24	Deadline for submission of Opt-Out Notice, Objections, or dispute their share of the settlement proceeds
9-10-24	Deadline for counsel to file motion for order of final approval

A final fairness hearing in this matter shall be set for October 3, 2024 at 8:30 a.m. in Department 23 of this Court. The Class Notice and proposed order shall be revised to reflect the information reflected herein, including the date of the final fairness hearing and the corresponding deadlines.

Lastly, the Court notes that the moving papers fail to demonstrate submission of notice of the subject settlement to the LWDA; the same shall be submitted in connection with the final approval motion.

MINUTE ORDER

EXHIBIT C

Murphy v. Stinson Enterprises, Inc.

Report 09/05/2024

Plaintiff's Counsel: BASHAM LAW GROUP
Contact: Gary Basham, Esq.

Defense Counsel: MCCORMICK BARSTOW LLP
Contact: Laura A. Wolfe, Esq.

Summary

Total Class Size
63

Class Period
05/01/2019-10/31/2023

PAGA Period
05/01/2022-10/31/2023

Initial Mailing
June 11, 2024

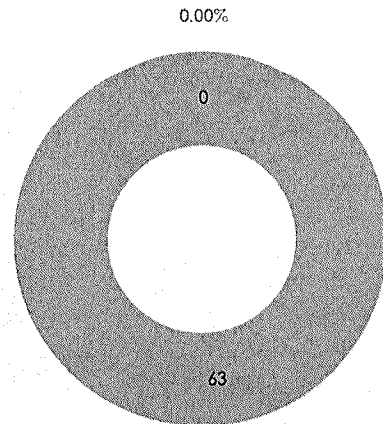
Response Deadline
July 26, 2024

Final Approval Hearing
October 3, 2024

Class

ITEM	AMOUNT
Total Class Members:	63
Total Opt Outs Rec'd:	0
Total Objections Rec'd:	0
Total Disputes Rec'd:	0
% of Opt-Outs Rec'd:	0.00%

Percentage of Class to Opt-Out



Mailing

ITEM	AMOUNT
Notices Returned:	2
Forwarded Notices:	0
Notices Traced:	2
Notices Returned 2 nd Time:	0
Undeliverable Notices:	2
Requested Notices:	0
Notices Re-mailed:	0

ILYM GROUP, Inc.
SETTLEMENT ADMINISTRATION EXPERTS

NOTICE: All calculations in the weekly report are provided as a reference and will vary each week. Details regarding Claims and Settlement Amounts are based on preliminary data supplied to our office at the time of our involvement in the case. If you have questions regarding any data in this report, please contact your Claims Manager.

EXHIBIT D

BASHAM LAW GROUP

Employment Law Counsel

8801 Folsom Blvd., Suite 280
Sacramento, California 95826
Phone: (916) 282-0841
Fax: (916) 266-7478
gary@bashamlawgroup.com

May 8, 2023

VIA ONLINE

Labor Workforce Development Agency
800 Capitol Mall, Suite 5000
Sacramento, CA. 95814

VIA CERTIFIED MAIL/RETURNED RECEIPT REQUESTED

Stinson Enterprises Inc. dba Modesto Toyota
Attn.: Lynn Stinson, President
4513 McHenry Avenue
Modesto, CA 95356

VIA EMAIL

Laura A. Wolfe, Esq. (Laura.Wolfe@mccormickbarstow.com)

Re: *NOTICE OF LABOR LAW VIOLATIONS (CA. LABOR CODE § 2699.3)*

To Whom It May Concern:

Pursuant to the requirements of Labor Code § 2699.3, aggrieved employee Kenneth Murphy ("Plaintiff") hereby notifies the Labor Workforce Development Agency ("LWDA") of labor law violations, and the facts and circumstances giving rise to them, committed by his former employer, Stinson Enterprises, Inc., doing business as Modesto Toyota ("Defendant Employer") against himself and other aggrieved employees of Defendant Employer employed in California.

This letter also serves to notify *Defendant Employer* of the labor law violations against Plaintiff and other aggrieved employees, and the facts and circumstances giving rise to

those violations. Plaintiff intends to seek penalties against Defendant Employer for each and every violation averred to herein to the fullest extent permitted by law.

A. Statement of Facts.

Plaintiff is a former employee of Defendant Employer. Defendant Employer employed Plaintiff in several different sales positions, including a sales representative and Used Car Manager's Assistant. Murphy worked for Defendant Employer from approximately July 2021 to January 2023. Defendant Employer is a new and used car dealership located in Modesto, California. At all relevant times, Defendant Employer was and is a California Corporation with its corporate offices located in Modesto, California. At all relevant times, Defendant Employer is and has been subject to the California Labor Code.

Throughout the course and scope of Plaintiff's employment with Defendant Employer, Plaintiff, and on information and belief other sales employees such as sales representatives, sales managers, sales manager assistants and other sales related positions working for Defendant Employer in California, were required to use their personal cell phones for Defendant Employer's business purposes. This included sending and receiving calls and texts, and downloading and using several different apps on their phones, such as Provision and VinConnect. Defendant Employer, however, failed to reimburse Plaintiff, and on information and belief all other California sales employees for the use of their personal cell phones for business purposes. Defendants required Plaintiff and on information and belief all other California sales employees to incur business expenses without reimbursing them for said expenses in violation of Labor Code §2802. Plaintiff and on information and belief all other all other California sales employees were and are entitled to reimbursement, restitution or compensation for the use of their personal cell phones for Defendant Employer's business purposes.

B. Labor Code Violations

Business Expenses: Defendant Employer required Plaintiff and other California sales employees employed by Defendant Employer to incur business expenses as described herein without reimbursing them for said expenses or compensating them for said use in violation of Labor Code §2802.

C. Theories of Relief.

If permitted, Plaintiff, by and through his well-qualified counsel, intends to seek relief under the Private Attorneys General Act ("PAGA") for the actions of Defendant Employer for both himself and other aggrieved employees of Defendant Employer in California. By way of illustration and without limitation, Plaintiff will pursue the following theories of relief:

Plaintiff believes Defendants violated numerous provisions of the California Labor Code and Wage Orders, including without limitation: Labor Code § 2802. As a result of these violations, Plaintiff, on behalf of himself, other aggrieved employees, and the State, will seek penalties against Defendant under Labor Code §2699(f).

For instance, by way of illustration and without limitation, Plaintiff will seek the following civil penalties against Defendant Employer for himself, the State, and aggrieved employees:

- i. Plaintiff seeks civil penalties under Labor Code §2699(f) for Defendant Employer failure to reimburse business expenses, in violation of Labor Code §2802.

Plaintiff will be represented by attorneys at Basham Law Group. Basham Law Group is well qualified to pursue this matter. Information on the firm and its attorneys may be found at www.bashamlawgroup.com. Pursuant to Labor Code §2699.3(a)(2)(A), we respectfully request that the LWDA notify Plaintiff and Defendant Employer by certified mail that it does not intend to investigate the alleged violations within 60 calendar days of the postmark date of this notice.

If, within the next 65 days, the LWDA or the California Division of Labor Standards Enforcement, does not investigate these claims and Defendant Employer does not make any efforts to resolve these claims as outlined in this letter, we will require disclosure and notice of all subsequent settlements for any of the violations of law listed or described in this letter, in order to determine the recovery of the Firm's catalyst attorneys' fees as permitted under California law. Be advised that any settlements with any of the aggrieved employees after the date of this letter may result in an award of catalyst fees to Basham Law Group.

Sincerely,

BASHAM LAW GROUP

A handwritten signature in black ink, appearing to read 'G. Basham', with a long horizontal line extending to the right.

Gary R. Basham