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CESAR GUILLEN HERNANDEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

CESAR GUILLEN HERNANDEZ,
individually and on behalf of others similarly
situated, and as an aggrieved employee and
Private Attorney General;

Plaintiff,

vs.

SIMPSON CHEVROLET OF IRVINE, a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 30-2024-01376148-CU-OE-CXC

*Assigned for All Purposes to: Hon. William D.
Claster, Dept. CX-101*

**DECLARATION OF HEATHER
DAVIS, ESQ. IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: December 20, 2024
Time: 9:00 A.M.
Dept: CX-101

Reservation No.: 74428864

Complaint Filed: January 25, 2024
Trial Date: None Set

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1. I am an attorney duly admitted to the Bar of the State of California and licensed to practice before all courts of the State of California. I am an Owner and Partner with the Protection Law Group, LLP, counsel of record for Plaintiff CESAR GUILLEN HERNANDEZ (“Plaintiff”). I have personal knowledge of the facts stated herein and if called as a witness I could and would competently testify thereto.

2. I am a duly licensed attorney and have been a member of the Colorado State Bar since 1998, the California State Bar since 2005 and the Arizona State Bar since 2007. I graduated from the University of Denver School of Law in 1998 and I am licensed to practice before all courts of the State of California and Colorado as well as the State of Arizona and District Courts throughout the country.

4. During my employment with Littler Mendelson, P.C., I continued my practice of employment law and was responsible for and defended dozens of complex class actions, including some of the largest representative and class actions brought under the California Labor Code, including meal and rest break violations, overtime, minimum wage claims, off the clock work and other related wage claims. My practice included the management of dozens of class actions. My management of these cases included taking and defending hundreds of depositions and interviews of hundreds of putative class members, as well as extensive state, federal and appellate briefing on hundreds of wage and hour issues involving class actions.

5. During my employment at Littler Mendelson, I played a significant role in the class actions for which I was responsible. In particular, I was often in charge of the leading the strategy of the cases and drafting all of the briefs. I received a wide-array of wage and hour class action experience performing the following types of tasks: drafting demurrers; motions to strike

1 and/or dismiss; removing actions from state court to federal court; drafting and responding to
2 written discovery; drafting and opposing discovery related motions; arguing discovery related
3 motions; drafting motions to consolidate related matters; interviewing putative class members
4 and obtaining declarations in connection with class certification; drafting oppositions to motions
5 for class certification; drafting motions for decertification following class certification;
6 conducting exposure analyses to assess the strengths and weaknesses of asserted claims, the
7 likelihood of prevailing at class certification and potential damages resulting from such claims;
8 drafting mediation briefs; and serving as the primary contact to in-house counsel. In short, I
9 played an integral role in all aspects of litigation from the inception of a matter through and
10 beyond class certification.

11 6. During my practice in other jurisdictions and continuing today, I have been
12 primarily devoted to working in employment law and on complex class action and representative
13 litigation and multi-plaintiff work.

14 7. Protection Law Group LLP is a law firm specifically devoted to the representation
15 of employees against employers in California involving claims relating to violations of the
16 California Labor Code, including claims for failure to pay all wages owed, failure to pay overtime
17 premiums, failure to pay meal and rest premiums and failure to provide accurate wage records.
18 The practice of employment law is a very specific, narrow field which requires diligence in an
19 ever-evolving field of substantive and procedural law.

20 8. Although not exhaustive, below is a representative list of several of the wage and
21 hour class actions that I performed substantial work on while I was an attorney with Littler
22 Mendelson, including, but not limited to: *Villacres v. ABM Industries, Inc.*, 189 Cal.App.4th 562
23 (2010); *Brizuela v. Copart, Inc.*, CIVRS11101592, (San Bernardino Superior Court class action
24 settlement); *Augustus v. ABM Industries, Inc.*, BC336416, 2 Cal. 5th 257 (2016); *Tagaki v. United*
25 *Airlines*, 2:11-CV9191 (Central District class action settlement), *Babasa v. Comerica, Inc.*, 3:11-
26 CV00595, *Leyva v. Medline Industries, Inc.* 5:11-cv-00164 (Central District), *Blue v. Coldwell*
27 *Banker Residential Brokerage Co.*, BC417335, (Los Angeles Superior Court, class action
28 settlement), and *Acosta v. Texwood Industries, Inc.*, 2:07-cv-03237-DDP-PLA (Central District

1 class action settlement).

2 9. Since opening my firm, I have served as lead counsel or co-class counsel in several
3 wage and hour class and/or representative actions seeking wages and penalties owed on behalf of
4 employees for which final approval of the settlement or class certification has been granted,
5 including, but not limited to the following:

- 6 • *Holzer v. Wedbush Securities, Inc.*, BC550462 (Los Angeles Superior Court wage and
7 hour class action certifying class of independent contractors and appointing Protection
8 Law Group, LLP as class counsel);
- 9 • *White v. Windy Pizza Plus, LLC*, BC593377 (Los Angeles Superior Court wage and
10 hour class action certifying class of all non-exempt employees and appointing
11 Protection Law Group, LLP as class counsel);
- 12 • *Morera v. Continental Assets Mgmt.*, BC502003 (Los Angeles Superior Court wage
13 and hour class action appointing Protection Law Group, LLP as class counsel in
14 settlement);
- 15 • *Fong et al. v. Regis Corporation*, 3:13-cv-13-04497-VC (United States District Court,
16 Northern District of California, wage and hour class action settlement and
17 appointment Protection Law Group, LLP as class counsel in settlement);
- 18 • *Espinoza v. Financial Partners Credit Union*, BC502165 (Los Angeles Superior Court
19 wage and hour Class action appointing Protection Law Group, LLP as class counsel
20 in settlement);
- 21 • *Kesheshian, et al v. S. Cal. Logistics*, BC557981 (Los Angeles Superior Court wage
22 and hour class action appointing Protection Law Group, LLP as class counsel in
23 settlement);
- 24 • *Sampson v. 24 HR Homecare LLC*, BC586019 (Los Angeles County Superior Court
25 wage and hour class action);
- 26 • *Glenn v. Decron Properties Corp.*, BC578035 (Los Angeles Superior Court wage and
27 hour class action appointing Protection Law Group, LLP as class counsel in
28 settlement);

- 1 • *Torres v. Auto Rescue et al.*, RIC1509900 (Riverside County Superior Court wage and
2 hour class action appointing Protection Law Group, LLP as class counsel in
3 settlement);
- 4 • *Kashanian v. Plus Labs, Inc.*, 2016-1-CV-294231 (Santa Clara County Superior Court
5 wage and hour class action appointing Protection Law Group, LLP as class counsel in
6 settlement);
- 7 • *Cadena v. Tetra Property Management*, 257425 (Tulare County Superior Court wage
8 and hour class action appointing Protection Law Group, LLP as class counsel in
9 settlement);
- 10 • *Drayton v. Hollywood Park Casino*, BC593935 (Los Angeles Superior Court wage
11 and hour class action appointing Protection Law Group, LLP as class counsel in
12 settlement);
- 13 • *Khan v. FPI Management, Inc.*, JCCP4819 (Los Angeles Superior Court wage and
14 hour class action appointing Protection Law Group, LLP as class counsel in
15 settlement);
- 16 • *Byrd v. Masonite Corp.*, 5:16-cv-00035-JGBKK (United States District Court, Central
17 District of California appointing Protection Law Group, LLP as class counsel in
18 settlement);
- 19 • *Hadrick v. Woodmont Real Estate Serv., et al.*, CIV530405 (San Mateo County
20 Superior Court wage and hour class action appointing Protection Law Group, LLP as
21 class counsel in settlement);
- 22 • *Utterbach v. Daylight Transport, LLC et al.*, BC600994 (Los Angeles Superior Court
23 wage and hour class action appointing Protection Law Group, LLP as class counsel in
24 settlement);
- 25 • *Eiden v. Olive & June*, BC654685 (Los Angeles Superior Court wage and hour class
26 action appointing Protection Law Group, LLP as class counsel in settlement);
- 27 • *Lemus v. Slater Inc.*, CIVDS1703633 (San Bernardino Superior Court wage and hour
28 class action appointing Protection Law Group, LLP as class counsel in settlement);

- 1 • *Deluna v. Amerit Fleet Solutions et al.*, CIVDS1721564 (San Bernardino Superior
2 Court wage and hour class action appointing Protection Law Group, LLP as class
3 counsel in settlement);
- 4 • *Stone v. Universal Protection Services*, AAA Case No. 01-15-0002-7497 (American
5 Arbitration Association wage and hour class action appointing Protection Law Group,
6 LLP as class counsel in settlement on behalf of class of 75,000+ putative class
7 members);
- 8 • *Commick v. Prometheus Real Estate Group*, CIV531264 (San Mateo Superior Court
9 wage and hour class action appointing Protection Law Group, LLP as class counsel in
10 settlement);
- 11 • *Martinez v. AMRO Fabricating Corp.*, BC681938 (Los Angeles Superior Court wage
12 and hour class action appointing Protection Law Group, LLP as class counsel in
13 settlement);
- 14 • *Ramirez v. Western National Properties*, BC639319 (Los Angeles Superior Court
15 wage and hour class action appointing Protection Law Group, LLP as class counsel in
16 settlement);
- 17 • *Hernandez v. Access Dental Plan et. al*, 34-2017-00220944 (Sacramento Superior
18 Court wage and hour class action appointing Protection Law Group, LLP as class
19 counsel in settlement);
- 20 • *Fernandez v. Sumitomo Rubber North America, Inc.*, CIVDS1803211 (San
21 Bernardino Superior Court wage and hour class action appointing Protection Law
22 Group, LLP as class counsel in settlement);
- 23 • *Gomez v. Fairway Staffing Services, Inc.*, BC689771 (Los Angeles Superior Court
24 wage and hour class action appointing Protection Law Group, LLP as class counsel in
25 settlement);
- 26 • *Fuentes v. Communications Test Design, Inc.*, CIVDS1802427 (San Bernardino
27 Superior Court wage and hour class action appointing Protection Law Group, LLP as
28 class counsel in settlement);

- 1 • *Hartline v. Senior Operations, LLC*, BC697665 (Los Angeles Superior Court wage
2 and hour class action appointing Protection Law Group, LLP as class counsel in
3 settlement);
- 4 • *Carrozzella v. Basalite Concrete Products, LLC*, 34-2014-00220214 (Sacramento
5 Superior Court wage and hour class action appointing Protection Law Group, LLP as
6 class counsel in settlement);
- 7 • *Howey v. Battery Systems, Inc.*, 2026114 (Stanislaus Superior Court wage and hour
8 class action appointing Protection Law Group, LLP as class counsel in settlement);
- 9 • *Correa v. Cashbak, LLC*, BC723845 (Los Angeles Superior Court wage and hour class
10 action appointing Protection Law Group, LLP as class counsel in settlement);
- 11 • *Lemus v. Cass Construction*, 37-2017-00028180 (San Diego Superior Court wage and
12 hour class action appointing Protection Law Group, LLP as class counsel in
13 settlement);
- 14 • *Sales v. J.S. International Shipping Corp.*, 18CIV05048 (San Mateo Superior Court
15 wage and hour class action appointing Protection Law Group, LLP as class counsel in
16 settlement);
- 17 • *Aparicio v. Advantage Painting*, CIVDS2013809 (San Bernardino County Superior
18 Court approving PAGA Settlement);
- 19 • *Rodriguez v. TheRealReal, Inc.*, CGC-19-574661 (San Francisco County Superior
20 Court approving PAGA Settlement);
- 21 • *Parm v. Think Together*, CIVDS1823659 (San Bernardino County Superior Court
22 approving PAGA Settlement);
- 23 • *Casey-Neith v. Pacific Union Financial*, 30-2018-01014980 (Orange County Superior
24 Court approving PAGA Settlement);
- 25 • *Wallace v. Alvarado Restaurant Group, LLC*, 20STCV26260 (Los Angeles County
26 Superior Court approving PAGA Settlement);
- 27 • *Adams v. West Marine Products, Inc.*, 19CIV00436 (San Mateo Superior Court wage
28 and hour class action appointing Protection Law Group, LLP as class counsel in

- settlement); and
- *Coronel, et al. v. CMH Manufacturing, Inc., et al.*, RIC2003070 (Riverside County Superior Court approving PAGA Settlement);
 - *Elliott v. Safeamerica Credit Union*, RG19016356 (Alameda County Superior Court approving Class Action and PAGA Settlement)
 - *Herrera et al. v. Anixter, Inc. et al.*, 30-2020-01142893-CU-OE-CXC (Orange County Superior Court approving Class Action and PAGA Settlement);
 - *Alvarez v. 2H Construction, Inc.*, 21STCV05675 (Los Angeles County Superior Court approving Class Action and PAGA Settlement);
 - *Bahena v. New Way Landscape & Tree Services*, 37-2020-00030533-CU-OE-CTL (San Diego County Superior Court approving Class Action and PAGA Settlement);
 - *Guerrero v. Food Technology and Design, LLC*, 18STCV02304 (Los Angeles County Superior Court approving Class Action Settlement);
 - *Gonzalez v. Vista Pacifica Enterprises, Inc.*, RIC2001557 (Riverside County Superior Court approving PAGA Settlement);
 - *Alvarado v. Kiwi II Construction, Inc.*, RIC2001558 (Riverside County Superior Court approving PAGA Settlement);
 - *Maldonado v. P&K Investment Co., LLC*, RIC2002722 (Riverside County Superior Court approving PAGA Settlement)
 - *Sanchez v. MBK Senior Living*, 30-2019-01115793-CU-OE-CXC (Orange County Superior Court approving PAGA Settlement)
 - *Aguirre v. Prudential Overall Supply*, RICJCCP5046 (Riverside County Superior Court approving PAGA Settlement) July 27, 2022
 - *Carrillo v. Weartech International, Inc.*, 30-2020-01151333-CU-OE-CXC (Orange County Superior Court approving Class Action and PAGA Settlement);
 - *Salinas v. Brasstech Inc., et al.*, 30-2020-01141960-CU-OE-CXC (Orange County Superior Court approving PAGA Settlement)
 - *McCrumb v. Trifecta Management Group, Inc. et al.*, BCV-19-100621 (Kern County

- Superior Court approving Class Action and PAGA Settlement);
- *Andrade v. Dirt Movers, Inc.*, STK-CV-UOE-2021-0008346 (San Joaquin County Superior Court approving Class Action and PAGA Settlement);
 - *Barela v. Quail Park Retirement Village, LLC*, VCU282224 (Tulare County Superior Court approving Class Action Settlement)
 - *Martinez v. Merit Logistics, LLC*, RIC2001625 (Riverside County Superior Court approving Class Action an PAGA Settlement)
 - *Aguilar v. Animal Supply Company, LLC*, 19STCV31413 (Los Angeles County Superior Court approving Class Action and PAGA Settlement)
 - *Marquez v. Collabera Inc.*, 37-2022-00010988-CU-0E-CT (San Diego Superior Court approving Class Action and PAGA Settlement);
 - *Hernandez v. Baltazar Construction, Inc.*, 21STCV11456 (Los Angeles County Superior Court approving Class Action and PAGA Settlement)
 - *Cortez v. Perfect Pac L.P.*, MCV084722 (Madera County Superior Court approving Class Action and PAGA Settlement)
 - *Rivera v. J.B. Wholesale Roofing and Building Supplies, Inc.*, 21TRCV00503 (Los Angeles County Superior Court approving Class Action and PAGA Settlement)
 - *McCoy v. Road Runner Sports, Inc.* 19STCV37733 (Los Angeles County Superior Court approving Class Action and PAGA Settlement)
 - *Lopez v. Bio-Reference, LLC*, 21STCV46533 (Los Angeles County Superior Court approving Class Action and PAGA Settlement)
 - *Holladay v. Grandcare Health Services, LLC et al.*, 20STCV42115 (Los Angeles County Superior Court approving Class Action and PAGA Settlement)
 - *Brooks v. Younger MFG, Co.*, 19STCV20386 (Los Angeles County Superior Court approving Class Action and PAGA Settlement)
 - *Jurado v. Aequor Health Services, LLC.*, 21STCV06001 (Los Angeles County Superior Court approving Class Action and PAGA Settlement)
 - *Ray et.al v. Unical Aviation, Inc.*, CIVDS1804952 (Lead Case) (San Bernardino

- County Superior Court approving Class Action and PAGA Settlement)
- *McGrew v. Pabon Construction Company*, 21STCV30819 (Los Angeles County Superior Court approving Class Action and PAGA Settlement)
 - *Mijangos v. Grant Construction Inc.*, BCV-23-102043-TMS (Kern County Superior Court approving Class Action and PAGA Settlement)
 - *Parrott v. Knorr Systems Int'l, LLC et.al.*, 30-2022-01268047-CU-OE-CXC (Orange County Superior Court approving Class Action and PAGA Settlement)
 - *Gonzalez et.al. v. Children's Home of Stockton*, STK-CV-UOE-2022-0006373 (San Joaquin County Superior Court approving Class Action and PAGA Settlement)
 - *Varela v. McKinley Children's Center*, 22STCV17487 (Los Angeles County Superior Court approving Class Action and PAGA Settlement)
 - *Torres v. Jan Marini Skin Research, Inc.*, 22CV401294 (Santa Clara County Superior Court approving Class Action and PAGA Settlement)
 - *Muir v. Dave's World, Inc. dba Tahoe Dave's Skis & Boards*, S-CV-0049251 (Placer County Superior Court approving Class Action and PAGA Settlement)
 - *Garcia v. City Wide Property Services Inc.*, 34-2022-00328787 (Lead Case) (Sacramento County Superior Court approving Class Action and PAGA Settlement)

10. I am fully familiar with the legal and factual issues in the Action and have specific experience litigating complex wage and hour actions as class actions, including employment cases as set forth above.

11. Including myself, Protection Law Group includes nine attorneys, all of whom actively and continuously represent plaintiffs in employment class actions and representative actions, in Superior Courts throughout the State of California, in the Court of Appeal, and in various Federal courts. Because of the unique history and nature of our practice, all of the attorneys at Protection Law Group have a high level of knowledge and experience in labor and employment law. Besides myself, the following attorneys at Protection Law Group expended significant time in connection with this matter:

- a. Amir Nayebdadash – Founding Partner of Protection Law Group, LLP. Mr.

1 Nayebdadash received his Bachelor of Arts degree from University of California,
2 Los Angeles and a Juris Doctor degree from Pepperdine University School of Law.
3 He was admitted to practice law in California in November of 2004, and has been
4 admitted to practice in all federal district courts in the State of California. Prior to
5 founding Protection Law Group, LLP, Mr. Nayebdadash worked at Littler
6 Mendelson, P.C., the largest labor and employment law firm in the United States.
7 In 2013, Mr. Nayebdadash and I founded Protection Law Group LLP. Since the
8 inception of Protection of Law Group, LLP, Mr. Nayebdadash has focused his
9 practice on the representation of employees against employers in California. Mr.
10 Nayebdadash has extensive experience in all aspects of employment litigation,
11 with a focus on wage and hour class and representative action, including, but not
12 limited to taking and defending depositions, briefing and arguing motions,
13 preparing for class certification, negotiating complex wage and hour settlements,
14 trial and appeal.

15 b. Susan Huerta – Senior Attorney at Protection Law Group, LLP. Ms. Huerta
16 received her Bachelor’s of Science degree from California State University,
17 Northridge and a Juris Doctor degree from Southwestern Law School. Ms. Huerta
18 was admitted to practice in California in June 2008 and is admitted to practice law
19 in all California Federal Courts and United States Court of Appeals for the Ninth
20 Circuit. Prior to joining Protection Law Group, LLP, Ms. Huerta’s practice focused
21 on representing plaintiffs in individual employment and class actions. Since joining
22 Protection Law Group, LLP, Ms. Huerta’s practice has focused solely on the
23 representation of employee plaintiffs in complex wage and hour class and
24 representative actions.

25 c. Brendan J. Burton – Senior Associate at Protection Law Group, LLP. Mr. Burton
26 received his Bachelor of Arts degree from the University of San Diego and a Juris
27 Doctor degree from California Western School of Law. Mr. Burton was
28 admitted to practice in California in December 2018 and is admitted to practice

1 law in all California Federal Courts and United States Court of Appeals for the Ninth
2 Circuit. Prior to joining Protection Law Group, LLP, Mr. Burton's practice
3 focused on recovering damages for injured victims. Since joining Protection Law
4 Group, LLP, Mr. Burton's practice has focused solely on the representation
5 of employee plaintiffs in complex wage and hour class and representative actions.
6 Mr. Burton has extensive experience briefing and arguing motions, and
7 managing written discovery.

- 8 d. Shadi Sahebghalam – Associate Attorney at Protection Law Group, LLP. Ms.
9 Sahebghalam received her Bachelor of Liberal Arts degree from University of
10 California, Los Angeles and a Juris Doctor degree from Pacific Coast University,
11 School of Law. Ms. Sahebghalam was admitted to practice in California in
12 April 2022 and is admitted to practice law in Eastern and Southern Districts of
13 California Federal Courts. Prior to joining Protection Law Group, LLP, Ms.
14 Sahebghalam's practice focused on representing plaintiffs in individual
15 employment discrimination cases and wage and hour disputes in state and federal
16 court as well as arbitration. After joining Protection Law Group, LLP, Ms.
17 Sahebghalam's practice has focused solely on the representation of employee
18 plaintiffs in complex wage and hour class and representative actions.

19 12. The Settlement presented here only resulted after having engaged in formal
20 discovery, extensive informal discovery and investigation and is the product of hard-fought
21 litigation and extensive arms' length negotiations. In my opinion as an experienced class counsel,
22 the Settlement is fair, reasonable, adequate, and in the best interests of the Class.

23 **PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

24 13. Defendant SIMPSON CHEVROLET OF IRVINE ("Defendant") is a Chevrolet
25 dealership that offers vehicles for sale or lease, maintenance, upgrades and provides services to
26 clients throughout California. Plaintiff Cesar Guillen Hernandez was employed by Defendant as
27 an hourly-paid, non-exempt employee in the position of Sales Porter and Service Porter at
28 Defendants' location in Irvine, California.

1 14. On December 13, 2024, Plaintiff provided notice to Defendants and the California
2 Labor and Workforce Development Agency (“LWDA”) of the alleged wage and hour violations
3 and his intent to seek civil penalties pursuant to the Private Attorneys General Act of 2004
4 (“PAGA”). Attached hereto as **Exhibit 1** is a true and correct copy of the PAGA Notice provided
5 to the LWDA and Defendants.

6 15. On January 25, 2024, Plaintiff filed a class action complaint with the Orange
7 County Superior Court, Case No. 30-2024-01376148-CU-OE-CXC (“the Action”), against
8 Defendants, alleging the following causes of action: (1) Unpaid Overtime; (2) Unpaid Meal
9 Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final
10 Wages Not Timely Paid; (6) Wages Not Timely Paid During Employment; (7) Failure to Provide
11 Accurate Wage Statements; (8) Failure to Reimburse Expenses; and (9) Violation of California
12 Business & Professions Code §§ 17200, *et. seq.*

13 16. On February 20, 2024, Plaintiff filed a First Amended Complaint adding a separate
14 individual representative Action alleging one cause of action for violation of California Labor
15 Code § 2699 – the Private Attorneys General Act of 2004 (“PAGA Action”).

16 17. On February 21, 2024, Plaintiff propounded the following discovery: (i) Form
17 Interrogatories – General, Set One, (ii) Special Interrogatories, Set One, (iii) Requests for
18 Production of Documents, Set One, and (iv) a Deposition Notice of Defendant’s Person(s) Most
19 Qualified.

20 18. Thereafter, the Parties engaged in discussions to attend a formal private mediation.
21 Plaintiff requested certain documents and data be produced in order to accurately and fairly
22 evaluate the claims and damages, so that any approval motion would be granted. The Parties
23 agreed, and decided to mediate with Kevin Barnes, Esq., on the nearest available date, August 21,
24 2024. On April 4, 2024, the Parties filed a Joint Stipulation regarding Discovery and Mediation,
25 setting forth duties and responsibilities of each party prior to mediation.

26 19. In advance of mediation, Defendant provided Plaintiff’s Counsel with extensive
27 informal discovery including all relevant policies and handbooks in place during the Class Period,
28 which included all applicable policies relating to meal breaks, rest breaks, timekeeping, the

1 payment of wages and other relevant areas of investigation, a randomly selected 20% sampling
2 of time and payroll data for the putative class, and figures and information regarding the class
3 size and composition. The randomly-selected 20% sampling included records for putative class
4 members who were employed throughout different time periods during the Class Period, that is
5 representative of the Class. With this data for the Class, Plaintiff's Counsel and their retained
6 expert were able to perform a comprehensive damages analysis and estimate Defendant's
7 potential violations, liability, and exposure, including, and not limited to, analyzing time and pay
8 data, considering potential meal period violations, potential rest period violations, potential
9 synthetic meal period recordings, unpaid and rest period premiums, rounding, overtime and
10 premium payments, etc. This discovery and investigation allowed Plaintiff's Counsel to perform
11 a comprehensive damages analysis and estimate Defendant's potential liability.

12 20. After extensive review of the mediation documents and other information, on
13 August 21, 2024, the Parties attended a full day mediation before Kevin Barnes, Esq. At the
14 mediation, the Parties engaged in intensive settlement discussions during which they debated
15 their respective positions and exchanged views regarding the strengths and weaknesses of the
16 alleged claims, but despite the help of the mediator were unable to reach an agreement.

17 21. The Parties endeavored to diligently continue discussions through the mediator,
18 and on August 30, 2024, the Parties each agreed to a mediator's proposal, assenting to the
19 essential terms of settlement.

20 22. Thereafter the Parties diligently worked to draft and negotiate a long form Joint
21 Stipulation of Class Action and PAGA Settlement ("Settlement Agreement"). On September 20,
22 2024, the Parties fully-executed the long form Settlement Agreement.

23 23. Now, following substantial investigation and extensive settlement negotiations,
24 Plaintiff moves for preliminary approval of this Settlement Agreement. A true and correct copy
25 of the Settlement Agreement is attached hereto as **Exhibit 2**.

26 24. Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Class,
27 Collective, and Representative Settlement Agreement and Class Notice, as well as information
28 regarding the preliminary approval hearing on this matter, were submitted to the LWDA via

1 online filing at <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys->
2 General-Act.html on November 18, 2024. Attached hereto as **Exhibit 3** is a true and correct copy
3 of the online submission.

4 **SUMMARY OF THE TERMS OF SETTLEMENT**

5 25. Plaintiff seeks preliminary approval of the proposed Joint Stipulation of Class
6 Action and PAGA Settlement Agreement. Attached hereto as **Exhibit 2** is a true and correct copy
7 of the Parties' Class Action and PAGA Settlement Agreement (hereinafter "Settlement
8 Agreement" or "Settlement"). A true and correct copy of the proposed Class Settlement Notice,
9 is attached to the Settlement Agreement as **Exhibits A**.

10 26. Plaintiff seeks to provisionally certify the following class for settlement purposes:
11 all current and former hourly-paid, non-exempt employees of Simpson Chevrolet of Irvine who
12 were employed by Simpson Chevrolet of Irvine in the state of California at any time between
13 January 25, 2020, and October 29, 2024. *See* Settlement Agreement ¶¶3, 7. The Class Period and
14 release of class claims covers the time period from January 25, 2020, and October 29, 2024. *See*
15 Settlement Agreement ¶28.

16 27. The Parties have agreed that PAGA Members shall be defined as: all current and
17 former hourly-paid, non-exempt employees of Simpson Chevrolet of Irvine who were employed
18 by Simpson Chevrolet of Irvine in the state of California at any time between December 13, 2022,
19 and October 29, 2024. *See* Settlement Agreement ¶¶20, 22. The PAGA Period and release of
20 PAGA claims covers the time period from December 13, 2022, to October 29, 2024. *See*
21 Settlement Agreement ¶22.

22 28. According to information provided to Class Counsel by Defendant's Counsel,
23 there are 1,260 Class Members and 486 PAGA Members.

24 29. Subject to Court approval, the Parties have agreed to settle the Class and PAGA
25 claims at issue for a non-reversionary Gross Settlement Amount of \$565,000.00, exclusive of any
26 employer-side payroll taxes. Settlement Agreement ¶14.

27 30. The Gross Settlement Amount is based on Defendant's representation that the
28

1 Class Members worked a total of 23,296 workweeks during the Class Period. Should the
2 qualifying workweeks by the Class Members during the Class Period ultimately increase by more
3 than 10% (i.e., exceed more than 25,625 workweeks), Defendant shall have the right its sole
4 discretion to either (1) reduce the Class Period such that the workweeks to not exceed 25,625, or
5 (2) pay a pro-rata increase in the GSA equal to the percentage increase in workweeks above
6 25,625. For example, if the workweek count increases by 12%, then Defendant may, at its sole
7 discretion, elect to pay a 2% increase to the GSA. Defendant shall confirm, through the Settlement
8 Administrator, that the number of workweeks did not increase by more than 10%. Settlement
9 Agreement ¶40.

10 31. The Gross Settlement Amount will initially be allocated as follows:

- 11 a. Class Counsel's Fees in the amount of thirty-five percent (35%) of the
12 Gross Settlement Amount, amounting to \$197,750.00.
- 13 b. Class Counsel's Costs, not to exceed \$20,000.00.
- 14 c. Settlement Administration Costs for services performed by the Settlement
15 Administrator ILYM Group, Inc., not to exceed \$9,250.00.
- 16 d. Class Representative Incentive Payment to named Plaintiff in the amount
17 of \$7,500.00.
- 18 e. PAGA Payment of \$60,000.00, including the distribution of \$18,750.00 to
19 the LWDA, which constitutes 75% of the settlement amount allocated to
20 PAGA claims, and \$6,250.00 of which will be distributed to PAGA
21 Members.

22 Settlement Agreement ¶¶42, 43, 44, 45.

23 32. After deducting these amounts, the Net Settlement Amount of approximately
24 \$272,500.00 shall be distributed to the Participating Class Members. The Net Settlement Amount
25 will be distributed and paid to Participating Class Members on a *pro-rata* basis based on the
26 number of weeks worked during the Class Period. Settlement Agreement ¶46.

27 33. In addition, as stated above, PAGA Members shall receive a *pro-rata* share of the
28 25% portion of the PAGA Payment allocated for aggrieved employees. Settlement Agreement

¶45.

34. The payment to each Class Member will vary based on the number of Workweeks the Class Member worked, and whether they are entitled to a share of the PAGA Payment, but will provide an average estimated payment of \$162.20.

35. PAGA Members shall receive their portion of the PAGA Payment regardless of their decision to opt-out of the Class Settlement. Settlement Agreement ¶¶ 47(b).

36. Each Class Member's settlement allocation will be allocated between wage and nonwage payments as follows: twenty percent (20%) wages, forty percent (40%) penalties, and forty percent (40%) interest. Settlement Agreement ¶47(c).

37. Employer-side payroll taxes shall be paid by Defendant separately from and in addition to the Gross Settlement Amount. Settlement Agreement ¶14.

38. The proposed Settlement Agreement is a non-reversionary and non-claims made settlement. All money from the Net Settlement Amount will be distributed to the Class Members. No money from the Settlement will revert to Defendant. *See* Settlement Agreement ¶39.

39. Any residue from checks issued to Participating Class Members and PAGA Members remaining uncashed after 180 days will be distributed to the State Controller's Office Unclaimed Property division as unclaimed property to be held in trust for such Participating Class Members pursuant to California's Unclaimed Property Law. As such, no "unpaid residue" under California Code of Civil Procedure § 384 will result from the settlement. Settlement Agreement ¶61.

40. This proposed Settlement resolves all of the Participating Class Members' claims against Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers (the "Released Parties") as to the facts alleged in the operative Complaint and all claims that could have been alleged based on such facts. The Released Class Claims are the claims that Plaintiff and the other Participating Class Members are releasing in exchange for the consideration provided in the Settlement Agreement. These claims are any

1 and all claims, rights, demands, liabilities and causes of action that are alleged, or reasonably
2 could have been alleged based on the facts and claims asserted in the Operative Complaint in this
3 Action, including the following claims: any claims for wages, penalties, bonuses, business related
4 expenses, severance pay, vacation pay, employment benefits, stock options, violation of any
5 personnel policy, any claims based on discrimination, harassment, unlawful retaliation, violation
6 of public policy, or damages of any kind whatsoever, arising out of any common law torts,
7 contracts, express or implied, any covenant of good faith and fair dealing, any theory of wrongful
8 discharge, any theory of negligence, any theory of retaliation, any legal restriction on any
9 Defendant's right to terminate the employment relationship, or any federal, state, or other
10 governmental statute, executive order, regulation or ordinance, or common law, or any other basis
11 whatsoever, to the fullest extent provided by law (the "Released Claims"). Settlement Agreement
12 ¶68.

13 41. The proposed Settlement also resolves all PAGA Members' claims arising under
14 PAGA that were alleged in the operative Complaint, or could have been alleged, for the PAGA
15 Period. Settlement Agreement ¶68.

16 **THE SETTLEMENT IS REASONABLE**

17 **Method of Distribution**

18 42. The proposed settlement is based on the number of Workweeks worked by each
19 Class Member. This method is commonly used in wage and hour class actions because it relies
20 upon objective evidence of the total days of employment, which Class Members can easily review
21 and confirm for themselves. This information is readily available from Defendant's records, and
22 the Settlement Administrator can apply the formula in a fair and transparent manner.

23 43. Additionally, this method of distribution is commonly used in wage and hour class
24 actions because it allows for a distribution that corresponds closely to the alleged damages since
25 employees experience the same working conditions, so their damages are directly related to the
26 amount of time they were employed.

27 44. The effectiveness of Class Counsel in prosecuting this case has translated into
28 monetary benefits for the Class, PAGA Members, and State of California in the following

1 respects: (1) the Class, PAGA Members, and State of California will recover over a reasonably
2 short period of time as opposed to waiting additional years for the same, or possibly, a worse,
3 result; (2) a guaranteed result that compares favorably with other similar class action settlements
4 of this type, (3) significant savings in Class Counsel's fees and costs which would have only
5 increased significantly had the case progressed through trial, appeals, and continued litigation.

6 **Discovery and Informed Arms-Length Negotiations**

7 45. Settlement was reached in this matter only after engaging in formal and informal
8 discovery and investigations. Prior to mediation, Defendant informally produced time and payroll
9 records for all Class Members, written policies including the employee handbooks in effect during
10 the Class Period, stand-alone wage and hour policies, and other relevant documents. Defendant
11 also provided information regarding the number of putative class members, the number of current
12 versus former employees, the total workweeks and pay periods worked by the Class; and the Class
13 Members' average rate of pay. With the time and pay records, Class Counsel and our retained
14 expert were able to perform a comprehensive damage analysis and estimate Defendant's potential
15 violations, liability, and exposure, including, and not limited to analyzing time and pay data,
16 considering potential meal period violations, potential rest period violations, potential synthetic
17 meal period recordings, rounding, overtime and premium payments, etc. The Parties extensively
18 briefed issues regarding class certification and liability and provided their analyses to the mediator
19 for his consideration.

20 46. Thereafter, the Parties engaged in a full day of mediation with Kevin Barnes, Esq.,
21 a highly-respected mediator with substantial experience mediating wage and hour class actions,
22 during which the Parties engaged in extensive settlement negotiations. The settlement
23 negotiations were at arm's length and, although conducted in a professional manner, were
24 adversarial. Defendant at all times maintained that it had complied with California wage and hour
25 laws. Likewise, if this matter had not been resolved, Plaintiff was willing and prepared to
26 vigorously litigate this dispute. The proposed settlement was reached at the end of a process that
27 was neither fraudulent nor collusive and was reached only after a full day of mediation that
28 allowed the Parties to reach a compromise of the hotly disputed claims with the help of the

mediator.

Estimate of Potential Value

47. Class Counsel analyzed all available data and estimated Defendant's maximum potential exposure at approximately \$16,094,703.37 assuming the litigation was successful at trial on the principal claims at issue, and then reduced this exposure analysis based on the likelihood of obtaining class certification, prevailing at trial, and other attendant risks. This amount is based on the total estimated maximum liability for all the workweeks at the time of mediation. At mediation, there were approximately 23,296 workweeks at issue. Based on the average rate of pay during the Class Period of \$19.78 and finding a presumptive meal period violation rate of 48.8%, Class Counsel estimated the total meal break damages owed at \$1,479,792.55. Rest breaks were unrecorded and were thus difficult to gauge. However, based on the same types of practices that were leading to employees missing meal breaks, or receiving short and late meal periods, Class Counsel estimated a 48.8% violation rate with respect to rest periods, which resulted in approximately \$3,034,849.37 in potential damages. Plaintiff's claims for overtime and minimum wage were based on off-the-clock work performed including off-the-clock work as a result of Defendant's meal period practices. Based on these practices Class Counsel estimated that Defendant owed the Class approximately \$910,453.45 in unpaid wages. Waiting time penalties amounted to \$735,816.00. Penalties for inaccurate wage statements amounted to \$1,813,400.00. Finally, Class Counsel estimated non-duplicative penalties arising under PAGA, including violations of Labor Code §§ 204 and 1174(d) could amount to as much as \$8,120,392.00. However, during the mediation, Defendant raised several issues which impacted the risks attendant with the continued litigation of these claims.

48. Class Counsel did not separately value Plaintiff's claim for violation of California Business and Professions Code § 17200. California Business and Professions Code § 17208 extends the statute of limitations on Plaintiff's other allegations, which qualify as unfair business practices, to four (4) years and Plaintiff has incorporated this expanded statute of limitations in considering the potential damages associated with Plaintiff's other claims. Plaintiff did not separately value the injunctive relief associated with this claim or potential equitable relief that

1 was more directly sought through other claims.

2 **Analysis of Specific Claims and Risks Considered**

3 49. Although the investigation and information discovered supports Plaintiff's
4 contentions, the strengths of these claims varied and Defendant raised potential defenses and other
5 circumstances that impacted the risk of proceeding on a class-wide basis. Defendant proffered
6 defenses to both certification and the merits of Plaintiff's claims. Defendant contended that
7 Plaintiff's claims are not suitable for class certification because individual issues and affirmative
8 defenses would predominate should this case go to trial. As with all class actions, these complex
9 cases raise difficult management and proof issues and, accordingly, there is a significant risk that
10 the Court may deny class certification.

11 ***Meal Period Analysis***

12 50. A large portion of Defendant's estimated liability lies in Plaintiff's meal period
13 claims. Plaintiff's theory of liability was based upon Defendant's failure to provide timely, full,
14 and/or uninterrupted meal periods. Plaintiff contended that Defendant's practices throughout the
15 Class Period were unlawful, required employees to perform work and monitor their issued radio
16 devices during their meal periods and interfered with employees' rights to take meal breaks where
17 they were completely relieved of their duties. Plaintiff contended that Defendant failed to pay
18 meal period premiums for missed, late, short, or interrupted meal periods that arose as a result of
19 these practices. Based on a review and analysis of the time and payroll data, my office estimated
20 a meal period violation rate of approximately 48.8%. Accordingly, based upon information
21 regarding the Class workweeks and average rate of pay, Class Counsel estimated potential meal
22 period damages of \$1,479,792.55.

23 51. However, meal period claims have been increasingly difficult to certify in recent
24 years and Defendant argued that their meal period policies and practices throughout the Class
25 Period were lawful. Defendant contended that to the extent that putative class members failed to
26 take their meal periods or took a short or late meal period, they did so voluntarily. As such,
27 Defendant contended the records that indicated non-compliant meal periods had been waived.
28 Defendant argued that investigation into these meal periods would raise multiple individual issues

1 that would pose challenges to certification, including and whether meal periods were non-
2 compliant, why they were non-compliant, and whether they had been waived. Defendant
3 contended that these highly individualized questions of fact would prevent class certification.

4 52. While Class Counsel disagreed with Defendant's arguments and factual
5 contentions, Class Counsel recognized the circumstances and realities of the case, applicable case
6 law and regulations, costs and expenses of further litigation and certification, and risks to
7 recovery, associated with this claim. Accordingly, Plaintiff applied a 75% discount for risks
8 associated with certification of this claim and a 75% discount associated with the risks of
9 succeeding on the merits, establishing liability, and proving damages, leaving a resulting value of
10 \$92,487.03.

11 ***Rest Period Analysis***

12 53. Similarly, Plaintiff would likely face difficulties proving the alleged rest period
13 violations, as Defendant were not required to record these breaks. Plaintiff contended that
14 Defendant failed to provide class members with timely, full, and uninterrupted rest periods and
15 also failed to implement a compliant rest period policy during the class period. Plaintiff believed
16 that Defendant' written policy requiring employees remain on premises during their rest breaks
17 was unlawful and violated California law. Plaintiff estimated that putative class members received
18 a non-compliant a rest period on average 48.8% of the time throughout the Class Period and
19 estimated damages of approximately \$3,034,849.37.

20 54. In contrast, Defendant argued that their written policies were lawful and that all
21 employees were provided an opportunity to take a rest period for every four hours worked or
22 major fraction thereof. Defendant argued that whether employees had received a compliant rest
23 period, the reasons why a putative class member failed to receive a compliant rest period, and
24 whether such rest period was waived raised individual issues that could not be certified and that
25 even if such a claim could be certified, Plaintiff would be unable to adequately prove the alleged
26 damages given the lack of records.

27 55. Litigating rest period claims is inherently difficult as an employer's records, as is
28 the case here, do not usually indicate when a rest period is short, late, interrupted or missed

1 entirely. While Class Counsel disagree with Defendant's arguments and factual contentions, there
2 were significant risks associated with this claim. Accordingly, a discount of 75% was applied to
3 account for the risks associated with obtaining and maintaining certification and a discount of
4 75% was applied to account for the risks associated with succeeding on the merits, establishing
5 liability, proving the extent of damages and ultimately obtaining this award. This resulted in a
6 risk-based estimate of approximately \$189,678.09.

7 ***Unpaid Wages - Minimum Wage and Overtime Claims***

8 56. Plaintiff alleges that Defendant failed to pay putative Class Members overtime and
9 minimum wages as a result of uniform policies, practices, and procedures, that required putative
10 class members to perform work during meal periods and before clocking-in and after clocking-
11 out in order to complete heavy workloads. This off-the-clock work was work for which Plaintiff
12 alleges he and other putative class members failed to receive payment at all and additionally
13 regularly caused Plaintiff and other putative class members to work more than eight hours in a
14 day or 40 hours in a week thereby incurring additional overtime compensation. Plaintiff estimated
15 as a result of these violations, Class Members incurred approximately one hour of unpaid wages
16 (combination of unpaid straight time as well as the additional overtime premium) per week
17 amounting to \$910,453.45 in damages. This estimated one (1) hour of off-the-clock
18 work/overtime for each workweek includes Plaintiff's estimate of \$455,226.73 in unpaid wages
19 and \$455,226.72 in unpaid overtime premiums.

20 57. Defendant contended that their overtime policies and practices comply with the
21 law and that they paid putative class members over the minimum wage for all hours worked.
22 Defendant also produced wage records reflecting overtime compensation paid to many of the
23 putative class members. Defendant further contended that all employees were required to record
24 all time worked and that Defendant were not aware that any work had been performed off-the-
25 clock to the extent such off-the-clock work was, in fact, performed. Defendant also argued that
26 individual liability issues predominate, including: (1) whether each employee worked off-the-
27 clock; (2) whether Defendant knew or should have known about each employee's off-the-clock
28 work; (3) whether each employee received non-discretionary bonuses and commissions; (4)

whether each employee worked overtime; and (5) whether Defendant knew or should have known that each putative class member performed overtime work. Moreover, given that the bulk of these claims were based on off-the-clock work not reflected in Defendant's time records, Defendant argued that proving damages at trial would not be manageable.

58. Plaintiff disagrees with Defendant's contentions but acknowledges that claims regarding off-the-clock work involve substantial challenges in obtaining and maintaining class certification, establishing liability and providing damages, in light of potential individualized issues and the lack of records. Accordingly, Class Counsel discounted their initial valuation of this claim by 75% to account for risks regarding certification and 75% for the risks associated with succeeding on the merits, establishing liability, proving the extent of damages and ultimately obtaining this award. This resulted in a risk-based estimate of approximately \$56,903.34 with respect to these claims.

Waiting Time Penalties

59. Plaintiff alleges that Defendant intentionally and willfully failed to pay Plaintiff and other putative class members all wages due to them upon termination, within the time period permissible under California law as a result of Defendant's failure to pay employees all wages due from off-the-clock work, as well as unpaid meal and rest period premiums. Based on the information provided by Defendant at mediation there were approximately 53 former employees within the three-year statute of limitations who Plaintiff believes were entitled to waiting time penalties of approximately \$583.98 per Class Member, or \$735,816.00 total.

60. However, there were substantial risks associated with Plaintiff's waiting time penalties claims. First, these claims were derivative of Plaintiff's previous claims and if certification was denied on those underlying claims, these claims would also likely fail. Even if Plaintiff prevailed on his underlying off-the-clock claims, he would still be required to demonstrate that Defendant's violations of Labor Code § 203 were willful violations, a difficult prospect. Accordingly, Class Counsel discounted their initial valuation of this claim by 75% to account for risks regarding certification and 75% for the risks associated with succeeding on the

merits, establishing liability, proving the extent of damages, and ultimately obtaining this award. This resulted in a risk-based estimate of approximately \$45,988.50 with respect to these claims.

Wage Statement Claims

61. Plaintiff contended that throughout the Class Period there were derivative violations arising from the claims alleged above such that the wage statements failed to list the total number of hours worked, the actual gross wages earned, and the correct rates of pay. Based on these claims and assuming a violation could be proven once per pay period for each of the 485 employees employed during the 1-year time period employees were eligible for penalties, Plaintiff estimated potential penalties for wage statement violations of approximately \$1,813,400.00.

62. Defendant contended that Plaintiff and putative class members suffered no actual injury from the alleged facial wage statement violations. Defendant also contended that derivative violations would rise or fall based on the prior claims and that it could not be demonstrated that these violations for items such as off-the-clock work were knowing and intentional. Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them rather than a pure calculation of damages after liability is proven. *Cf., Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) with *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011). While Class Counsel does not agree with this assessment, in light of the risks raised by Defendant, Class Counsel discounted their initial valuation 80% for risks pertaining to certification and 80% for risks pertaining to the merits, establishing liability, proving the extent of damages, and obtaining this award. This resulted in a risk-based adjustment of \$72,536.00 for this claim.

PAGA Claims

63. Class Counsel also separately contemplated the risks of proceeding with the PAGA cause of action and potential liability Defendant could face from this cause of action.

64. As part of the valuation of the potential PAGA claims, Class Counsel included claims under Labor Code §§ 204 and 1174(d). My office did not assign independent value for Plaintiff's Claims arising under Labor Code § 204, Labor Code § 1174(d), or Violation of

1 California Business and Professions Code § 17200 *et. seq.* Plaintiff's claims were violations of
2 Labor Code § 204 and Labor Code § 1174(d) were included in my office's evaluation of Plaintiff's
3 PAGA claims. Labor Code § 210 authorizes the recovery of penalties arising from violations of
4 Labor Code § 204, but explicitly states that such penalties may be recovered either through section
5 § 210 or PAGA, but not both. *See* Labor Code §210(c) (permitting recovery of penalties through
6 section 210 or PAGA but prohibiting duplicative recovery). Penalties under 1174(d) may
7 arguably only be recovered by the Labor Commissioner, *see Caliber Bodyworks, Inc. v. Superior*
8 *Court*, 134 Cal.App.4th 365, 383 (2005), and accordingly my office included this recovery when
9 evaluating Plaintiff's PAGA claims, but again Plaintiff would not appear to be entitled to a
10 duplicative recovery even if Plaintiff successfully persuaded the Court that an independent right
11 to such recovery exists.

12 65. The Parties agreed during settlement negotiations to allocate \$60,000.00 of the
13 Settlement towards the PAGA claims, which represents approximately 10.6% of the Gross
14 Settlement Amount. This percentage of the settlement is well above the range of PAGA
15 settlements regularly approved in both state and federal court for cases that include both a class
16 and PAGA action. Settlements that allocate only 1% of the total settlement value to resolve PAGA
17 claims is typical of wage and hour settlements and PAGA amounts as little as 0.27% of the Gross
18 Settlement Amount have been approved as reasonable by courts. *See, e.g.,*

- 19 • *Davis v. Brown Shoe Co.*, 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015) (PAGA
20 Payment of \$5,000 in a \$1.5 million class settlement);
- 21 • *Zamora v. Ryder Integrated Logistics, Inc.*, 2014 U.S. Dist. LEXIS 184096 (S.D. Cal.
22 2014) (\$7,500 payment to LWDA for PAGA on a \$1.5 million class settlement);
- 23 • *Lusby v. Gamestop Inc.*, 2015 U.S. Dist. LEXIS 42637 (N.D. Cal. 2015) (PAGA
24 Payment of \$5,000 in a \$500,000 class settlement);
- 25 • *Cruz v. Sky Chefs, Inc.*, 2014 U.S. Dist. Lexis 17693 (N.D. Cal. 2014) (approving
26 payment of \$10,000 to the LWDA for PAGA out of \$1,750,000 class settlement);
- 27 • *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011)
28 (approving PAGA payment of \$7,500 to the LWDA out of \$6.9 million common-fund

settlement);

- *Martino v. Ecolab Inc.*, No. 3:14CV04358 (N.D. Cal. 2017) (\$100,000 allotted as PAGA penalties or 0.48% of \$21,000,000 settlement amount);
- *East v. Comprehensive Educational Services Inc.*, Case No. 11-CECG-04226 (2015) (\$10,000 allotted as PAGA penalties or 0.13% of \$7,595,846 settlement amount);
- *Bararsani v. Coldwell Banker Residential Brokerage Company*, Case No. BC495767 (2016) (\$10,000 allotted as PAGA penalties or 0.22% of \$4,500,000 settlement amount);
- *Rico v. Cardinal Health 200 Inc.*, No. CIVRS-14-01451 (2017) (\$5,000 allotted as PAGA penalties or 0.14% of \$3,500,000 settlement amount);
- *Moppin v. Los Robles Medical Center*, No. 5:15CV01551 (C.D. Cal. 2017) (\$15,000 allotted as PAGA penalties or 0.40% of \$3,775,000 settlement amount);
- *Scott-George v. PVH Corporation*. No., 2:13CV00441 (E.D. Cal. 2017) (\$15,000 allotted as PAGA penalties or 0.46% of \$3,250,000 settlement amount);
- *Hart v. Parkview Community Hospital Medical Center*, No. RIC-14-06044 (2016) (\$10,000 allotted as PAGA penalties or 0.39% of \$2,550,000 settlement amount);
- *Nehrlich v. RPM Mortgage Inc.*, No. 30-2013-00666783-CU-OE-CXC (2017) (\$10,000 allotted as PAGA penalties or 0.40% of \$2,500,000 settlement amount);
- *Kelley v. The Related Companies of California L.L.C.*, No. CIVDS-13-07167 (2016) (\$10,000 allotted as PAGA penalties or 0.50% of \$2,000,000 settlement amount); and
- *Castrejon v. O'Connell Landscape Maintenance Inc.*, No. RIC-12-12798 (2015) (\$5,000 allotted as PAGA penalties or 0.33% of \$1,500,000 settlement amount.

66. In allocating \$60,000.00 to Plaintiff's PAGA claims, Class Counsel considered that PAGA penalties would be subject to the same defenses and risks as Plaintiff's class claims, as well as defenses unique to PAGA.

67. For instance, Defendant contended that penalties could not be stacked, that Plaintiff would be unable to obtain penalties for derivative labor code violations based on underlying wage violations.

1 68. Moreover, since Defendant denied and continued to deny that they ever violated
2 any provision of the California Labor Code, Defendant would likely have argued, that, even if,
3 *arguendo*, such violations occurred, heightened penalties should not apply because Defendant
4 had not received notice from a labor agency or Court that they were violating the law. *See, e.g.,*
5 *Amaral v. Cintas Corp. No. 2*, 163 Cal.4th 1157, 1209 (2008).

6 69. Defendant also contended that when determining whether or not to assess a
7 penalty, the court exercises the same discretion as the Labor Commissioner and may reduce the
8 penalties to be assessed against the employer pursuant to California Labor Code section
9 2699(e)(1)-(2). As such, Defendant contended that, with respect to a PAGA claim, the Court was
10 unlikely to assess cumulative penalties for the maximum number of possible, separate California
11 Labor Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory,
12 especially where certain conduct may be governed by multiple provisions of the California Labor
13 Code that are interrelated and work in tandem.

14 70. Defendant also contended that adjudication of claims arising under PAGA would
15 not be manageable and that the individualized inquiries Defendant argued would defeat
16 certification of the alleged claims would also prevent Plaintiff from demonstrating that the PAGA
17 claim could be successfully managed and adjudicated without abridging Defendant's due process
18 rights.

19 71. Defendant maintained that, in addition to their strong arguments against the
20 underlying claims, taking the current unsettled state of law, it would be unjust to award the
21 maximum potential PAGA penalties. There was a dearth of law and guidance regarding trials
22 and/or assessment of penalties under the PAGA statute, and there is no clearly-established
23 methodology for the valuation and/or assessment of PAGA penalties.

24 72. Based upon the violations alleged above Class Counsel estimated PAGA penalties
25 in this matter could exceed \$8,120,392.00. However, a discount of 75% was applied to account
26 for the risks associated with establishing manageability, a discount of 75% was applied to account
27 for the risks associated with succeeding on the merits, establishing liability, and proving the extent
28 of penalties that are warranted, and a discount of 80% was applied in light of the unique risks to

1 PAGA including the likely discretionary reduction of penalties by the Court given the
2 circumstances of the Action and outside considerations. This brought the relative value of the
3 PAGA claim to approximately \$292,334.11.

4 ***General Considerations***

5 73. For all claims and when considering the settlement generally, Class Counsel
6 recognized that, even if Plaintiff prevailed at class certification, proving the amount of wages due
7 to each Class Member would be an expensive, time-consuming, and extremely uncertain
8 proposition. In order to prove liability and damages, Class Counsel will need to request and
9 analyze thousands of pages of documents, contact Class Members and obtain numerous
10 declarations at great expense. Obtaining the cooperation of current employees would also be
11 difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer.
12 On the other hand, Defendant would likely be able to obtain the cooperation of their employees.
13 Moreover, even if Plaintiff prevails at class certification and trial, possible appeals would
14 substantially delay any recovery by the Class.

15 74. Therefore, taking into account the strengths and weaknesses of each claim, the
16 unique risks associated therewith, the general risks associated with litigating the case and the
17 significant additional costs and expenses that would be incurred by both sides in litigating the
18 Action through class certification, trial, and appeals, and the unique risks of this particular Action,
19 resulted in an adjusted risk-based estimated liability of approximately \$749,927.07. The slightly
20 higher figure achieved on behalf of the Settlement Class is warranted not only because it benefits
21 the Class, but it may address any conservative calculations that cannot be accounted for from off-
22 the-clock work as this time was unrecorded. Moreover, the Settlement Amount of \$750,000.00
23 achieves about 4.8% of the total exposure, which in my opinion is fair, adequate, and reasonable.

24 75. Based on these factors, I therefore submit that the Settlement is fair, reasonable,
25 and adequate. The Settlement is in the best interest of the Class Members, PAGA Members, and
26 State of California and is within the accepted range of recoveries for this type of litigation given
27 the inherent risk of litigation, the risk of obtaining and maintaining class certification, and the
28 costs of further litigation.

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77. Moreover, notice of the requested Class Representative Incentive Payment is disclosed to the Class Members in the Class Notice and should be preliminarily approved by the Court. *See* Settlement Agreement, Ex. A.

78. The attorneys' fees incurred by Class Counsel are in line with the common fund requested. Class Counsel is seeking thirty-three and one-third percent (35%) of the Gross Settlement Amount or \$197,750.00. Class Counsel has achieved an excellent result for the Class during hard fought negotiations. Class Counsel has extensive experience in wage and hour disputes, and we were able to use our extensive experience and skills to achieve this result. The Motion for Final Approval will elaborate on the nature of the legal services provided, the time incurred in performing those services, and Class Counsel's hourly rates. The Motion for Final Approval will also elaborate on the reimbursement for costs sought by Class Counsel, which are estimated not to exceed \$20,000.00. Notice of Class Counsel's requested fees and costs are disclosed to the Class in the Notice. *See* Settlement Agreement, Ex. A.

79. Subject to the Court’s Approval, the Parties have agreed to having Phoenix Class Action Administration Solutions (“Settlement Administrator” or “Phoenix”) administer the Settlement. The Parties do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. Settlement Agreement ¶34.

80. No later than twenty-one (21) days after the Court grants preliminary approval of the Settlement, Defendant will provide the Class List and Tax Rate Information to the Settlement

1 Administrator. Defendant shall provide the Settlement Administrator with a Microsoft Excel
2 spreadsheet containing the following information for each Class Member: (1) full name; (2) last
3 known home address; (3) last known telephone number; (4) social security number; (5) start and
4 end dates of active employment as a non-exempt employee of Defendant in the State of
5 California; (6) total Workweeks during the Class Period; (7) total Workweeks during the PAGA
6 Period; and (8) any other information required by the Settlement Administrator in order to
7 effectuate the terms of the Settlement. The Settlement Administrator shall perform any searches
8 necessary for confirmation of the Class Members' addresses, translate the Notice to Spanish, and
9 shall mail the Notice to all Class Members in both English and Spanish within seven (7) calendar
10 days of receiving the Class List. Settlement Agreement ¶¶50, 51, 52, 53.

11 81. I am not aware of an alternative method of providing notice to the Class which
12 would result in a higher likelihood of actual notice. The original source of the mailing addresses
13 is from each Class Member, who provided the information to Defendant. As a fail-safe to this
14 highly reliable method, additional searches will be performed on any notice returned as non-
15 deliverable. Settlement Agreement ¶52.

16 **OTHER PENDING ACTIONS**

17 82. I am not aware of any other currently pending individual, class or PAGA actions
18 that would be affected by the proposed settlement.

19 **INFORMATION TO BE SUPPLIED AT FINAL APPROVAL**

20 83. At final approval, my office will submit billing records for Class Counsel's fees
21 and costs.

22 84. At final approval, my office will submit a declaration from the Settlement
23 Administrator regarding the services it has performed and costs associated therewith. The
24 declaration from the Settlement Administrator shall also include the high, low, and average
25 payments to the Class Members.

26 85. At final approval, Plaintiff will provide a declaration regarding the time he spent
27 working on this matter his efforts throughout the litigation on behalf of the putative class
28 members.

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

Here, to

Heather Davis

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EXHIBIT 1



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El Segundo, CA 90245
Fax. 866.264.7880
www.protectionlawgroup.com

Priscilla Gamino, Esq.
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424.290.3095

December 13, 2023
Page 1 of 6

VIA ONLINE FILING

Labor and Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, CA 95814

PAGAfiling@dir.ca.gov

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: Cesar Guillen Hernandez v. Simpson Chevrolet of Irvine

Dear Representative:

This office represents Cesar Guillen Hernandez ("**Mr. Hernandez**") with respect to his claims under the California Labor Code against Simpson Chevrolet of Irvine ("**Employer**"). This letter is being sent simultaneously to Employer by certified mail.

Employer employed Mr. Hernandez from approximately February 2018 to approximately June 2023, as an hourly, non-exempt employee. During his employment with Employer, Mr. Hernandez was employed as a Sales Porter and Service Porter at Employer's location at 21 Auto Center Dr, Irvine, California 92618. Employer is a car dealership.

Mr. Hernandez intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("**PAGA**"). Mr. Hernandez is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of Employer ("**Aggrieved Employees**"). This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employer violated several of California's wage and hour laws during Mr. Hernandez's employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the Industrial Welfare Commission Wage Orders ("**IWC Wage Order**") including *inter alia*, IWC Wage Order No. 7. The claims made on behalf of Mr. Hernandez and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employer has engaged in numerous unlawful practices which resulted in the failure to pay Mr. Hernandez and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.



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First, Employer regularly required Mr. Hernandez and Aggrieved Employees to work more than eight (8) hours in a day or forty (40) hours in a workweek, but failed to pay them overtime compensation for such work. Employer also failed to provide Mr. Hernandez and Aggrieved Employees with adequate training as to the payment of overtime compensation, all in an effort to keep its workers uninformed as to their legal right to overtime compensation. In addition, Employer regularly required Mr. Hernandez and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Mr. Hernandez and Aggrieved Employees to: (1) respond to Employer and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before clocking in for the start of their shift; and (3) perform work after clocking out for the end of their shift. Mr. Hernandez and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Mr. Hernandez and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Mr. Hernandez and Aggrieved Employees to perform work off-the-clock without compensation. Employer also failed to accurately record the actual time worked by Mr. Hernandez and Aggrieved Employees, which resulted in a failure to pay Mr. Hernandez and Aggrieved Employees for all hours actually worked, including minimum wages, straight time wages, and overtime wages. Finally, and as a matter of policy and/or practice, Employer failed to pay overtime to Mr. Hernandez and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employer has failed to pay Mr. Hernandez and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employer violated IWC Wage Order No. 7 and California Labor Code sections 204, 510, 1194, 1197, 1197.1, and 1198.

Mr. Hernandez and Aggrieved Employees will therefore seek unpaid wages; PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 7; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; compensation pursuant to Labor Code Section 1194; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employer failed to provide Mr. Hernandez and Aggrieved Employees with legally-compliant 30-minute meal periods. Mr. Hernandez and Aggrieved Employees were required by Employer to work more than five (5) hours per day, but were not provided with uninterrupted 30-minute meal periods. Further, Mr. Hernandez and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employer regularly required Mr. Hernandez and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour



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of work. On the occasions that Mr. Hernandez and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short.

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Hernandez and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employer's management at various levels, affecting all hourly, non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Mr. Hernandez and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Mr. Hernandez and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Hernandez and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employer required Mr. Hernandez and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to telephone calls and/or radio/walkie-talkie, and in-person verbal interruptions; and (7) Employer's policy and culture prevented Mr. Hernandez and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees right to receive timely, uninterrupted, and duty-free meal periods.

Mr. Hernandez and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order No. 7 and California Labor Code sections 226.7, 512(a), and 1198.

Mr. Hernandez and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 7; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

Employer failed to authorize and permit Mr. Hernandez and Aggrieved Employees take legally-compliant 10-minute rest periods. Employer required Mr. Hernandez and Aggrieved Employees to work through rest periods. Mr. Hernandez and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Mr. Hernandez and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Mr. Hernandez and Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).



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December 13, 2023
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Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Hernandez and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer's management at various levels, affecting all hourly, non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employer failed to adequately inform and train Mr. Hernandez and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Mr. Hernandez and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Hernandez and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer required Mr. Hernandez and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to telephone calls and/or radio/walkie-talkie, and in-person verbal interruptions; and (7) Employer's policy and culture prevented Mr. Hernandez and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees right to receive rest periods.

Mr. Hernandez and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order No. 7 and California Labor Code sections 226.7, and 1198.

Mr. Hernandez and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 7; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

As to each pay period, Employer has failed to timely pay all wages earned because Mr. Hernandez and Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code section 204(a).

Mr. Hernandez and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

As a result of the practices described above, the wage statements provided to Mr. Hernandez and



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Aggrieved Employees failed to include the actual hours worked, the actual gross wages earned, and the correct rates of pay. Accordingly, Employer violated California Labor Code section 226(a).

Mr. Hernandez and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

Employer has failed to maintain accurate records relating to Mr. Hernandez and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employer violated IWC Wage Order No. 7 and California Labor Code sections 1198.5 and 1174(d).

Mr. Hernandez and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 7; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 7 requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Mr. Hernandez and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employer. These costs include, but are not limited to, use of a personal cell phone to conduct business, and for the purchase of work shoes.

Accordingly, Employer violated IWC Order No. 7 and California Labor Code sections 2800 and 2802.

Mr. Hernandez and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 7; and attorneys' fees and costs.

8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

Upon the termination of employment, Mr. Hernandez and Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employer's practices of requiring Mr. Hernandez and Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employer failed to pay Mr. Hernandez and Aggrieved Employees for all straight time wage, minimum



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wages and overtime compensation owed to them upon termination of their employment. Employer also failed to pay Mr. Hernandez and Aggrieved Employees for meal period premiums, and rest period premiums, amongst other wages. Accordingly, Employer violated California Labor Code sections 201 and 202.

Mr. Hernandez and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 203, 1199, and 2699(f)(2); and attorneys' fees and costs.

Therefore, on behalf of himself, the State of California and all Aggrieved Employees, Mr. Hernandez may seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us.

Thank you for your attention to this matter.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "Priscilla Gamino", is written over a light blue circular stamp.

Priscilla Gamino

Notice provided to Employer via Certified Mail (9414 7188 9956 2647 3554 08)

Simpson Chevrolet Of Irvine
21 Auto Center Drive
Irvine, CA 92618

Notice provided to Employer via Certified Mail (9414 7118 9956 2647 3570 20)

Simpson Chevrolet Of Irvine
Attn: 1505 Corporation CSC – Lawyers Incorporating Service, Inc., Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150-N
Sacramento, CA 95833

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Diana Diaz](#)
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation
Date: Wednesday, December 13, 2023 9:23:46 AM

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-999510-23

Order Number: ORD-000263468

Total:\$75.00

Card Type: Visa

Date: 12/13/2023

Billing Information

Name: Amir Nayebdadash

Email: diana@protectionlawgroup.com

Billing Address:

237 California St

El Segundo, California

90245

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EXHIBIT 2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

CESAR GUILLEN HERNANDEZ
individually, and on behalf of others similarly
situated, and as an aggrieved employee and
Private Attorney General,

Plaintiff,

vs.

SIMPSON CHEVROLET OF IRVINE, a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 30-2024-01376148-CU-OE-CXC
*Assigned for All Purposes to: Hon. William
Claster, Dept. CX-101*

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT**

Complaint Filed: January 25, 2024
Trial Date: None Set

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement is entered into by and between Plaintiff Cesar Guillen Hernandez, individually and on behalf of the Settlement Class, and as an aggrieved employee and Private Attorney General, and Defendant Simpson Chevrolet of Irvine.

DEFINITIONS

- 1. “Action” means the court action entitled “*Hernandez v. Simpson Chevrolet of Irvine*”, Case No. 30-2024-01376148-CU-OE-CXC, pending before the Orange County Superior Court.
- 2. “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class Action and PAGA Settlement.
- 3. “Class” or “Class Members” means all current and former hourly paid or non-exempt employees employed by Defendant within the state of California at any time during the Class Period.
- 4. “Class Counsel” means Protection Law Group, LLP.
- 5. “Class Counsel’s Fees and Costs” means attorneys’ fees for Class Counsel’s litigation and resolution of this Action and their expenses and costs incurred in connection with the Action, which shall be paid from the Gross Settlement Amount. Class Counsel will request attorneys’ fees not to exceed Thirty-Five Percent (35%) of the Gross Settlement Amount, *i.e.*, One Hundred and Ninety-Seven Thousand Seven Hundred and Fifty Dollars (\$197,750.00), and the reimbursement costs and expenses associated with the litigation and settlement of the Action, not to exceed Twenty Thousand Dollars (\$20,000.00), subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for fees and reimbursement of costs and expenses in the amount set forth above.
- 6. “Class List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator within twenty-one (21) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet and will include Class

Member's: (1) full name; (2) last known home address; (3) last known telephone number; (4) social security number; (5) start and end dates of active employment as a non-exempt employee of Defendants in the State of California; (6) total Workweeks during the Class Period; (7) total Pay Periods during the PAGA Period; and (8) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement.

7. "Class Period" means the period from January 25, 2020, and ending on either the date the Court signs the Preliminary Approval Order, or October 29, 2024, whichever occurs earlier.

8. "Class Representative" means Plaintiff Cesar Guillen Hernandez in his capacity as representative of the Participating Class Members.

9. "Class Representative Enhancement Award" means the amount that the Court authorizes to be paid to Plaintiff in addition to his Individual Settlement Payment, in recognition of the efforts and risks he has taken in assisting with the prosecution of the Action and in exchange for the General Release of his claims as provided herein.

10. "Court" means the Superior Court of the State of California for the County of Yolo.

11. "Defendant" means Simpson Chevrolet of Irvine.

12. "Effective Date" means the date that all of the following events have occurred: (i) the long-form Stipulation of Settlement (this Agreement) has been executed by Plaintiff, Defendant, Class Counsel and Defendant's Counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the Class Notice has been sent to the Class Members, providing them the opportunity to object to the Settlement, and the opportunity to opt out of the Settlement; (iv) the Court has held a formal fairness hearing and entered the Court's Final Order and Judgment and sixty (60) days have elapsed; and (v) the later of the following events: (A) when the period for filing any appeal, writ, intervention, or other proceeding opposing the Settlement has elapsed without any appeal, writ, intervention, or other proceeding having been filed; (B) when any appeal, writ, intervention, or other proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (C) when any appeal, writ,

1 intervention, or other proceeding has upheld the Court's Final Order and Judgment with no right
2 to pursue further remedies or relief. If the Court declines to approve the Settlement or the Effective
3 Date otherwise fails to occur, the entire Settlement is deemed void and unenforceable as if no
4 settlement of any claim was ever reached. All negotiations, statements and proceedings and data
5 relating thereto shall be protected by California Evidence Code § 1152 and shall be without
6 prejudice to the rights of any of the Parties.

7 13. "Final Approval" means the Court entering an order granting final approval of the
8 Settlement Agreement.

9 14. "Gross Settlement Amount" means the sum of Five Hundred and Sixty-Five
10 Thousand Dollars (\$565,000.00). The Gross Settlement Amount is non-reversionary; no portion
11 of the Gross Settlement Amount will return to Defendants, and includes all: (1) payments to the
12 Class; (2) Class Counsel's fees; (3) Class Counsel's costs; (4) Settlement Administration Costs;
13 (5) Incentive Payment to Plaintiff; and (6) Payment of PAGA Penalties to be paid to the California
14 Labor and Workforce Development Agency ("LWDA") and PAGA Members. The Gross
15 Settlement Amount is exclusive of employer share of any applicable payroll taxes, and any such
16 employer-side payroll taxes shall be paid by Defendant separately and in addition to the Gross
17 Settlement Amount. The Gross Settlement Amount plus any applicable employer-side payroll
18 taxes shall be the maximum amount Defendant is required to pay under the Settlement.

19 15. "Individual Settlement Payment" means the amount payable from the Net
20 Settlement Amount to each Participating Class Member and any payment a PAGA Member is
21 eligible to receive from the employee portion of the PAGA Penalties. Individual Settlement
22 Payments shall be paid by a Settlement Check made payable to Participating Class Members
23 and/or PAGA Members.

24 16. "Net Settlement Amount" means the funds available for payments to the Class,
25 which shall be amount remaining after the following amounts are deducted from the Gross
26 Settlement Amount: (1) Class Counsel's fees; (2) Class Counsel's costs; (3) Settlement
27 Administration Costs; (4) Class Representative Enhancement Payment to Plaintiff; and (5) the
28 PAGA Penalties to be paid to the LWDA and PAGA Members.

1 17. “Notice” means the Notice of Proposed Class Action Settlement in a form
2 substantially similar to the form attached hereto as Exhibit A, that will be mailed to Class
3 Members’ last known address, and which will provide Class Members with information regarding
4 the Action and information regarding the Settlement of the Action.

5 18. “Objection” means a Class Member’s valid and timely written objection to the
6 Settlement Agreement. For an Objection to be valid, it must include: (a) the objector’s full name,
7 address, telephone number, last four digits of the employees’ social security number or employee
8 ID number; (b) the name of the case and case number; and (c) a written statement of all grounds
9 for the objection accompanied by legal support, if any, for such objection.

10 19. “PAGA” means the California Labor Code Private Attorneys General Act of 2004
11 (Cal. Lab. Code §§ 2698, *et seq.*).

12 20. “PAGA Members” means all current and former hourly paid non-exempt
13 employees of Defendants who were employed by Defendants in the State of California at any
14 time during the PAGA Period.

15 21. “PAGA Penalties” means the amount that the Parties have agreed to allocate in
16 order to settle claims arising under the PAGA. The Parties have agreed that Sixty Thousand
17 Dollars (\$60,000.00) of the Gross Settlement Amount will be allocated to the resolution of
18 Plaintiff’s PAGA Claims. Seventy Five Percent (75%) of this amount (\$45,000.00) will be paid
19 to the LWDA in accordance with Labor Code §§ 2698 *et seq.* Twenty Five Percent (25%) of this
20 amount (\$15,000.00) will be distributed to PAGA Members. PAGA Members will receive
21 payment from the employee portion of the PAGA Penalties regardless of their decision to
22 participate in the Class Action if the PAGA Penalties is approved by the Court.

23 22. “PAGA Period” means the period from December 13, 2022, and ending on either
24 the date the Court signs the Preliminary Approval Order, or October 29, 2024, whichever occurs
25 earlier.

26 23. “Participating Class Members” means all Class Members who do not submit valid
27 and timely Requests for Exclusion.

28 24. “Parties” means Plaintiff and Defendants, collectively, and “Party” shall mean

either Plaintiff or Defendants, individually.

25. “Pay Period” shall mean any pay period, in which a PAGA Member worked at least one (1) day during the PAGA Period.

26. “Plaintiff” means Cesar Guillen Hernandez.

27. “Preliminary Approval” means the Court order granting preliminary approval of the Settlement Agreement.

28. “Released Class Claims” means all claims, rights, demands, liabilities and causes of action that are alleged, or reasonably could have been alleged based on the same or similar facts and claims asserted in the operative Complaint in this Action including the following claims:

- a. (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums), including any claims regarding failure to pay premium pay and/or to pay premium pay at the correct rate of pay; (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums), including any claims regarding failure to pay premium pay and/or to pay premium pay at the correct rate of pay; (4) Violation of California Labor Code §§ 1194, 1197 and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements), including any alleged failure to provide complete and/or accurate wage statements; (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (10) Violation of California Business and Professions Code § 17200, *et seq.*, including all claims for injunctive relief, declaratory relief, restitution, unfair business practices alleged or which could have been alleged in connection with any other claims; and (11) Violation of Labor Code § 2698, *et seq.* (Private Attorneys General Act of 2004 (PAGA)), including those claims set forth in Roberto Hernandez’s Letter to the Labor & Workforce

1 Development Agency for alleged violations of Labor Code sections 201, 202, 203,
2 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197,
3 1197.1, 1198, 2800, 2802, and the IWC Wage Orders generally, including but not
4 limited to overtime pay, minimum wage, regular wages and/or sick pay whether
5 contractual or statutory, as well as any and all other claims under California common
6 law, the California Labor Code including but not limited to the Private Attorneys
7 General Act, California Industrial Welfare Commission Wage Orders, and the
8 California Business and Professions Code alleged in or that could have been alleged
9 under the same or similar facts, allegations and/or claims pleaded in the Action, also
10 including any claims for penalties (statutory, civil or otherwise), attorneys' fees,
11 costs, interest, penalties, or premiums in connection with the claims in this Paragraph.
12 All federal claims shall likewise be released, and shall be barred by the settlement by
13 virtue of res judicata, in accordance with *Rangel v. PLS Check Cashers of Cal., Inc.*
14 889 F.3d 1106 (9th Cir. 2018).

15 This release shall apply to claims arising during the Class Period.

16 29. "Released PAGA Claims" means any and all PAGA claims that could have been
17 asserted under the California Labor Code Private Attorneys General Act of 2004 based on the
18 same or similar factual allegations and claims in the operative Complaint (the First Amended
19 Complaint) in this Action or any PAGA notice submitted by Plaintiff to the LWDA for the PAGA
20 Period.

21 30. "Released Parties" means the named Defendant Simpson Chevrolet of Irvine, and
22 any and all of its past, present and future direct or indirect parents, sister or related entities,
23 expressly including the Adams Group, Inc., acquired companies, subsidiaries, predecessors,
24 successors and affiliates as well as each of its or their past, present and future owners, including
25 officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers,
26 reinsurers, heir, representatives, accountants, auditors, consultants, and any individual or entity
27 which could be jointly liable with Defendant.

28 31. "Request for Exclusion" means a valid and timely written statement submitted by

1 a Class Member requesting to be excluded from the class settlement. To be effective, the Request
2 for Exclusion must contain (a) the Class Member's name, address, telephone number, and the last
3 four digits of the Class Member's Social Security number and/or the Employee ID number and
4 (b) a clear statement requesting to be excluded from the settlement of the Class claims. To be
5 effective, the Request for Exclusion must be post-marked by the Response Deadline and received
6 by the Settlement Administrator. The Request for Exclusion shall not be effective as to the release
7 of claims arising under the PAGA.

8 32. "Response Deadline" means the date sixty (60) calendar days after the Settlement
9 Administrator mails Notice to Class Members and the last date on which Class Members may
10 submit Requests for Exclusion, written objections to the Settlement, or Workweek Disputes. In
11 the event the 60th day falls on a Sunday or Federal holiday, the Response Deadline will be
12 extended to the next day on which the U.S. Postal Service is open. The Response Deadline for
13 Requests for Exclusion, written objections, and workweek disputes will be extended fifteen (15)
14 calendar days for any Class Member who is re-mailed a Notice by the Settlement Administrator,
15 unless the 15th day falls on a Sunday or Federal holiday, in which case the Response Deadline
16 will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline
17 may also be extended by express agreement between Class Counsel and Defendant. Under no
18 circumstances, however, will the Settlement Administrator have the authority to unilaterally
19 extend the deadline for Class Members to submit a Request for Exclusion or objection to the
20 Settlement.

21 33. "Settlement" means the disposition of the Action pursuant to this Agreement.

22 34. "Settlement Administrator" means Phoenix Class Action Administrators. The
23 Parties each represent that they do not have any financial interest in the Settlement Administrator
24 or otherwise have a relationship with the Settlement Administrator that could create a conflict of
25 interest.

26 35. "Settlement Administration Costs" mean the costs payable from the Gross
27 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
28 but not limited to, translating the Notice, printing, distributing, and tracking documents for this

Settlement, calculating/confirming the class member Workweeks from the information contained in the Class List, calculating each Participating Class Member's Individual Settlement Payment, tax reporting, distributing the Gross Settlement Amount, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties. Settlement Administration Costs shall not exceed Twenty Thousand Dollars (\$20,000.00).

36. "Settlement Class Members" shall mean all Participating Class Members as described in paragraph 60 and the PAGA Members.

37. "Tax Rate Information" shall mean the tax rate currently paid by Defendant for the employer's share of employment taxes in California.

38. "Workweek" shall mean any calendar week (*i.e.*, a week beginning with Sunday and ending with Saturday), in which a Class Member worked at least one (1) day during the Class Period.

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39. Settlement Consideration: Defendant shall fund the Gross Settlement Amount and all applicable employer-side payroll taxes following Final Approval by the Court and the Effective Date, and no later than the first business day after sixty (60) days from the entry of the Order granting Final Approval, and at which time such Order becomes final and is no longer appealable. The following will be paid out of the Gross Settlement Amount: the sum of the Individual Settlement Payments, the Class Representative Incentive Payment, Class Counsel's Fees and Costs, the PAGA Penalties, and the Settlement Administration Costs, as specified in this Agreement. Except for any employer-side taxes due on the Individual Settlement Payments, or as a result of an increase in the number of Workweeks as set forth below, Defendant shall not be required to pay more than the Gross Settlement Amount. The Gross Settlement Amount is non-reversionary; no portion of the Gross Settlement Amount will revert to Defendant.

40. Potential Increase to the Gross Settlement Amount: The Gross Settlement Amount is based on Defendant's representation that the Class Members worked a total of 23,296 Workweeks during the Class Period. Should the qualifying Workweeks worked by the Class

Members during the Class Period ultimately increase by more than 10% (*i.e.*, exceed more than 25,625 Workweeks), Defendant shall have right at its sole discretion to either (1) reduce the Class Period such that the workweeks do not exceed 25,625, or (2) pay a pro-rata increase in the GSA equal to the percentage increase in workweeks above 25,625. For example, if the workweek count increases by 12%, then Defendant may, at its sole discretion, elect to pay a 2% increase to the GSA. Defendant shall confirm, through the Settlement Administrator, that the number of Workweeks did not increase by more than 10%.

41. Distribution of the Gross Settlement Amount: Within fourteen (14) calendar days of the funding of the Settlement, the Settlement Administrator will issue payments for: (a) Individual Settlement Payments; (b) the PAGA Penalties to the LWDA; (c) the Class Representative Incentive Payment; (d) Class Counsel's Fees and Costs; and (e) Settlement Administration Costs.

42. Attorneys' Fees and Costs: Defendant agrees not to oppose any application or motion by Class Counsel for attorneys' fees of not more than One Hundred and Ninety Seven Thousand Seven Hundred and Fifty Dollars (\$197,750.00) plus the reimbursement of costs and expenses associated with the litigation and settlement of the Action, in an amount not to exceed Twenty Thousand Dollars (\$20,000.00), both of which will be paid from the Gross Settlement Amount. Any portion of the requested fees or costs that are not awarded to the Class Counsel shall be reallocated to the Net Settlement Amount and distributed to Participating Class Members as provided in this Agreement.

43. Class Representative Enhancement Payment: Defendant agrees not to oppose or object to any application or motion by Plaintiff for a Class Representative Enhancement Payment of Seven Thousand Five Hundred Dollars (\$7,500.00) for Plaintiff. The Class Representative Enhancement Payment is in exchange for the General Release of the Plaintiff's individual claims and for her time, effort, and risk in bringing and prosecuting the Action. Any portion of the requested Class Representative Enhancement Payment that is not awarded to the Class Representative shall be reallocated to the Net Settlement Amount and distributed to Participating Class Members as provided in this Agreement.

44. Settlement Administration Costs: The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments from the Gross Settlement Amount as further set forth in this Agreement. Settlement Administration Costs shall not exceed Nine Thousand Two Hundred and Fifty Dollars (\$9,250.00).

45. PAGA Penalties: Fifty Thousand Dollars (\$60,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the PAGA. The Settlement Administrator shall pay Seventy-Five Percent (75%) of the PAGA Penalties, or Forty-Five Thousand Dollars (\$45,000.00), to the LWDA. Fifteen Thousand Dollars (\$15,000.00) will be distributed to PAGA Members on a *pro rata* basis based on the total number of Pay Periods worked by each PAGA Member during the PAGA Period. PAGA Members shall receive their portion of the PAGA Penalties regardless of their decision to opt-out of the Class settlement.

46. Net Settlement Amount for Payment of Class Claims: The Net Settlement Amount will be used to satisfy the class portion of Participating Class Members' Individual Settlement Payments in accordance with the terms of this Agreement. The estimated Net Settlement Amount is as follows:

Gross Settlement Amount	\$	565,000.00
Enhancement Payment:	\$	7,500.00
Class Counsel's Fees:	\$	197,750.00
Class Counsel's Costs:	\$	20,000.00
PAGA Penalties	\$	60,000.00
Settlement Administration Costs:	\$	9,250.00
Estimated Net Settlement Amount	\$	272,500.00

47. Individual Settlement Payment Calculations: Individual Settlement Payments will be paid from the Net Settlement Amount and the Twenty-Five Percent (25%) portion of the PAGA Penalties allocated for PAGA Members and shall be paid pursuant to the formula set forth herein:

a) Calculation of Class Portion of Individual Settlement Payments: The

1 Settlement Administrator will calculate the total Workweeks for all Participating Class
2 Members by adding the number of Workweeks worked by each Participating Class
3 Member during the Class Period. The respective Workweeks for each Participating Class
4 Member will be divided by the total Workweeks for all Participating Class Members,
5 resulting in the Payment Ratio for each Participating Class Member. Each Participating
6 Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to
7 calculate each Settlement Class Member's estimated share of the Net Settlement Amount.

8 b) Calculation of PAGA Portion of Individual Settlement Payments: The
9 Settlement Administrator will calculate the total Pay Periods for all PAGA Members by
10 adding the number of Pay Periods worked by each PAGA Member during the PAGA
11 Period. The respective Pay Periods for each PAGA Member will be divided by the total
12 Pay Periods for all PAGA Members, resulting in the Penalties Ratio for each PAGA
13 Member. Each PAGA Member's Penalties Ratio will then be multiplied by the employee
14 portion of the PAGA Penalties to calculate each PAGA Member's estimated share of the
15 PAGA Penalties. PAGA Members shall receive this portion of their Individual Settlement
16 Payment regardless of whether they opt out of the participation regarding the Class claims.

17 c) Allocation of Individual Settlement Payments: All Individual Settlement
18 Payments will be allocated as follows: Twenty Percent (20%) of each Individual
19 Settlement Payment will be allocated as wages; Forty Percent (40%) shall be allocated as
20 interest; and Forty Percent (40%) shall be allocated as penalties. The portion of the
21 Individual Settlement Payment allocated to wages will be reported by the Settlement
22 Administrator on an IRS Form W-2. The remaining non-wage payments will be reported
23 on an IRS Form-1099 by the Settlement Administrator.

24 48. No Credit Toward Benefit Plans: The Individual Settlement Payments made to
25 Participating Class Members under this Settlement, as well as any other payments made pursuant
26 to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans
27 to which any Class Members may be eligible, including, but not limited to profit-sharing plans,
28

1 bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and
2 any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not
3 affect any rights, contributions, or amounts to which any Class Members may be entitled under
4 any benefit plans.

5 49. Settlement Administration Process: The Parties agree to cooperate in the
6 administration of the Settlement and to make all reasonable efforts to control and minimize the
7 costs and expenses incurred in administration of the Settlement. The Settlement Administrator
8 will provide the following services:

- 9 a) Establish and maintain a Qualified Settlement Fund.
- 10 b) Calculate the Individual Settlement Payment each Participating Class
11 Member is eligible to receive and the portion of the PAGA Penalties each
12 PAGA Member shall receive.
- 13 c) Translate the Notice from English to Spanish.
- 14 d) Print and mail the Notice in English and Spanish.
- 15 e) Conduct additional address searches for mailed Notices that are returned
16 as undeliverable.
- 17 f) Process Requests for Exclusion, field inquiries from Class Members.
- 18 g) Print and issue Settlement Payment Checks, prepare IRS W-2 and 1099
19 Tax Forms and any other filings required by any governmental taxing
20 authority.
- 21 h) Provide declarations and/or other information to the Court as requested by
22 the Parties and/or the Court regarding the settlement administration
23 process.
- 24 i) Provide weekly status reports to counsel for the Parties.
- 25 j) Posting a notice of final judgment online at Settlement Administrator's
26 website.

27 50. Delivery of the Class List and Tax Rate Information: Within twenty-one (21)
28 calendar days of Preliminary Approval, Defendant will provide the Class List and Tax Rate

Information to the Settlement Administrator. This is a material term of the Agreement, and if Defendant fail to comply, Plaintiff shall have the right to void the Agreement.

51. Notice by First-Class U.S. Mail: Within fourteen (14) calendar days after receiving the Class List from Defendant, the Settlement Administrator will mail the Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

52. Confirmation of Contact Information in the Class List: Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved and will then perform a single re-mailing. If any Notice sent to a Class Member by the Settlement Administrator is returned as undeliverable to a current employee, then Defendant shall make all reasonable efforts to obtain the current address from the Class Member and provide the same within seven (7) calendar days of notice from the Settlement Administrator. Those Class Members who receive a re-mailed Notice, whether by skip-trace or by request, will have between the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to postmark a Request for Exclusion, an Objection, or Workweek dispute to the Settlement.

53. Notice: All Class Members will be mailed a Notice in English and Spanish. Each Notice will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal terms; (c) the Class definition; (d) the total number of Workweeks each respective Class Member worked for Defendant during the Settlement Class Period; (e) each Class Member's estimated Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (f) the dates which comprise the Class Period; (g) the deadlines

1 by which the Class Member must postmark Requests for Exclusion, Objections to the Settlement,
2 or Workweek disputes; (h) the claims to be released, as set forth herein; and (j) the date for the
3 final approval hearing.

4 54. Disputed Information on Notice: Class Members will have an opportunity to
5 dispute the information provided in their Notice. To the extent Class Members dispute the number
6 of Workweeks with which they have been credited or the amount of their Individual Settlement
7 Payment, Class Members may produce evidence to the Settlement Administrator showing that
8 such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's
9 records will be presumed determinative. However, if a Class Member produces evidence to the
10 contrary by the Response Deadline, the Parties will evaluate the evidence submitted by the Class
11 Member and the Parties will make the final decision as to the number of eligible Workweeks that
12 should be applied and/or the Individual Settlement Payment to which the Class Member may be
13 entitled. If the Parties do not agree, the dispute will be submitted to the Court.

14 55. Defective Submissions: If a Class Member's Request for Exclusion is defective as
15 to the requirements listed herein, that Class Member will be given an opportunity to cure the
16 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3)
17 business days of receiving the defective submission to advise the Class Member that his or her
18 submission is defective and that the defect must be cured to render the Request for Exclusion
19 valid. The Class Member will have until the later of (a) the Response Deadline or (b) fifteen (15)
20 calendar days from the date of the cure letter, whichever date is later, to postmark a revised
21 Request for Exclusion. If a Class Member responds to a cure letter by filing a defective claim,
22 then the Settlement Administrator will have no further obligation to give notice of a need to cure.
23 If the revised Request for Exclusion is not postmarked within that period, it will be deemed
24 untimely.

25 56. Request for Exclusion Procedures: Any Class Member wishing to opt-out from the
26 Class settlement must sign and postmark a written Request for Exclusion to the Settlement
27 Administrator by the Response Deadline. The Request for Exclusion must include (a) the Class
28 Member's name, address, telephone number, and the last four digits of the Class Member's Social

1 Security number and/or the Employee ID number and (b) a clear statement requesting to be
2 excluded from the settlement of the Class claims. The date of the postmark on the return mailing
3 envelope receipt confirmation will be the exclusive means to determine whether a Request for
4 Exclusion has been timely submitted. All Requests for Exclusion will be submitted to the
5 Settlement Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the
6 Requests for Exclusion that were timely submitted. All Class Members who do not request
7 exclusion from the Action will be bound by all terms of the Settlement Agreement if the
8 Settlement is granted final approval by the Court. The Request for Exclusion shall not be effective
9 as to the release of claims arising under the PAGA. The Parties agree that there is no right for a
10 PAGA Member to opt out of our object to the PAGA Settlement.

11 57. Defendant's Right to Rescind: If Ten Percent (10%) or more of the Class Members
12 (rounded to the next whole number) elect not to participate in the Settlement, Defendant may, at
13 its election, rescind the Settlement Agreement and all actions taken in furtherance of it will be
14 thereby null and void. Defendant must meet and confer with Class Counsel prior to exercising
15 this right and must make clear its intent to rescind the Agreement within fourteen (14) calendar
16 days of the expiration of the opt-out period. If Defendant exercises its right to rescind the
17 Agreement, Defendant shall be responsible for all Settlement Administration Costs incurred to
18 the date of rescission.

19 58. Settlement Terms Bind All Class Members Who Do Not Opt-Out: Upon the
20 complete funding of the Gross Settlement Amount, any Class Member who does not affirmatively
21 opt-out of the Settlement by submitting a timely and valid Request for Exclusion will be bound
22 by all of its terms, including those pertaining to the Released Class Claims, as well as any
23 Judgment that may be entered by the Court if it grants final approval to the Settlement. Class
24 Members who opt-out of the Settlement shall not be bound by such Judgment or release. The
25 names of Class Members who have opted-out of the settlement shall be disclosed to the Counsel
26 for both Plaintiff and Defendant and noted in the proposed Judgment submitted to the Court.

27 59. Objection Procedures: To object to the Settlement, a Participating Class Member
28 must postmark a valid Objection to the Settlement Administrator on or before the Response

1 Deadline. The Objection must be signed by the Participating Class Member and contain all
2 information required by this Settlement Agreement including the employees full name, address,
3 telephone number, the last four digits of their social security number and/or Employee ID number,
4 the name of the case and case number, and the specific reason including any legal grounds for the
5 Participating Class Member's objection. The postmark date will be deemed the exclusive means
6 for determining that the Notice of Objection is timely. Participating Class Members who fail to
7 object in the manner specified above will be foreclosed from making a written objection but shall
8 still have a right to appear at the Final Approval Hearing in order to have their objections heard
9 by the Court. At no time will any of the Parties or their counsel seek to solicit or otherwise
10 encourage Participating Class Members to submit written objections to the Settlement or appeal
11 from the Order and Judgment. Class Counsel will not represent any Class Members with respect
12 to any objections to this Settlement.

13 60. Certification Reports Regarding Individual Settlement Payment Calculations: The
14 Settlement Administrator will provide Defendant's Counsel and Class Counsel a weekly report
15 which certifies: (a) the number of Class Members who have submitted valid Requests for
16 Exclusion; (b) the number of Notices returned and re-mailed; and (c) whether any Class Member
17 has submitted a challenge to any information contained in the Notice. Additionally, the Settlement
18 Administrator will provide to Counsel for both Parties any updated reports regarding the
19 administration of the Settlement Agreement as needed or requested.

20 61. Uncashed Settlement Checks: Any checks issued by the Settlement Administrator
21 to Participating Class Members and PAGA Members will be negotiable for at least one hundred
22 eighty (180) calendar days. If a Participating Class Member or PAGA Member does not cash his
23 or her Settlement Check or PAGA payment check within one hundred eighty (180) days, the
24 uncashed funds, subject to Court approval, shall be distributed to the Controller of the State of
25 California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et*
26 *seq.* for the benefit of those Participating Class Members and PAGA Members who did not cash
27 their checks until such time that they claim their property. The Parties agree that this disposition
28 results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net

1 Settlement Amount will be paid out to Participating Class Members and PAGA Members,
2 whether or not they all cash their Settlement Checks or PAGA payment checks. Therefore,
3 Defendant will not be required to pay any interest on such amounts. The Individual Settlement
4 Payments provided to Participating Class Members and to PAGA Members shall prominently
5 state the expiration date or a statement that the Settlement Check will expire in one hundred eighty
6 (180) days, or alternatively, such a statement may be made in a letter accompanying the Individual
7 Settlement Payment. Expired Individual Settlement Payments will not be reissued, except for
8 good cause and as mutually agreed by the Parties in writing. The Parties agree no unclaimed funds
9 will result from the Settlement, and therefore Defendant will not be required to pay any interest
10 on such amounts.

11 62. Administration of Taxes by the Settlement Administrator: The Settlement
12 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class
13 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid
14 pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding
15 all payroll taxes and penalties to the appropriate government authorities.

16 63. Tax Liability: Defendant makes no representations as to the tax treatment or legal
17 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are
18 not relying on any statement, representation, or calculation by Defendant or by the Settlement
19 Administrator in this regard. Plaintiff and Participating Class Members understand and agree that
20 they will be solely responsible for the payment of any taxes and penalties assessed on the
21 payments described herein. Defendant's share of any employer payroll taxes and other required
22 employer withholdings due on the Individual Settlement Payments, including, but not limited to,
23 Defendant's FICA and FUTA contributions, shall be paid separate and apart from the Gross
24 Settlement Amount.

25 64. Circular 230 Disclaimer: Each Party to this Agreement (for purposes of this
26 section, the "acknowledging party" and each Party to this Agreement other than the
27 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this
28 Agreement, and no written communication or disclosure between or among the Parties or their

1 attorneys and other advisers, is or was intended to be, nor shall any such communication or
2 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United
3 States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging
4 party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for
5 advice (including tax advice) in connection with this Agreement, (b) has not entered into this
6 Agreement based upon the recommendation of any other Party or any attorney or advisor to any
7 other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney
8 or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging
9 party; and (3) no attorney or adviser to any other Party has imposed any limitation that protects
10 the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such
11 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or
12 tax structure of any transaction, including any transaction contemplated by this Agreement.

13 65. No Prior Assignments: The Parties and their Counsel represent, covenant, and
14 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
15 to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
16 action, cause of action or right herein released and discharged.

17 66. Release by Participating Class Members: Upon the complete funding of the Gross
18 Settlement Amount and all applicable employer-side payroll taxes by Defendant, Participating
19 Class Members shall fully and finally release and discharge the Released Parties from the
20 Released Class Claims that arose during the Class Period. This release shall be binding on all
21 Participating Class Members.

22 67. Release by the State of California and LWDA: As of the date on which Defendant
23 fully funds the Settlement, Plaintiff, the LWDA, and the State of California release the Released
24 Parties of and from the Released PAGA Claims that could have been asserted under PAGA based
25 on the facts alleged in the PAGA Notice provided to the LWDA and in the operative Complaint.
26 A copy of this Agreement will be provided to the LWDA concurrently with submission of the
27 Preliminary Approval Motion. Eligible PAGA Members will receive their share of the employee
28 portion of the PAGA Penalties and will be deemed to have released any claims arising out of

1 PAGA, regardless of whether they opt-out from the release of their Class claims.

2 68. Release of Additional Claims & Rights by Plaintiff: Upon the funding of the Gross
3 Settlement Amount, Plaintiff Hernandez agrees—on behalf of himself only—to the additional
4 following General Release: In consideration of Defendant’s promises and agreements as set forth
5 herein, Plaintiff hereby fully releases the Released Parties from any and all Released Class Claims
6 and Released PAGA Claims and any and all claims whatsoever Plaintiff may have against
7 Released Parties regarding Plaintiff’s employment and/or the termination of employment
8 including, but not limited to, any claims for wages, penalties, bonuses, business related expenses,
9 severance pay, vacation pay, employment benefits, stock options, violation of any personnel
10 policy, any claims based on discrimination, harassment, unlawful retaliation, violation of public
11 policy, or damages of any kind whatsoever, arising out of any common law torts, contracts,
12 express or implied, any covenant of good faith and fair dealing, any theory of wrongful discharge,
13 any theory of negligence, any theory of retaliation, any legal restriction on any Defendant’s right
14 to terminate the employment relationship, or any federal, state, or other governmental statute,
15 executive order, regulation or ordinance, or common law, or any other basis whatsoever, to the
16 fullest extent provided by law. Plaintiff shall be deemed to have, and by operation of the Judgment
17 shall have, expressly waived and relinquished to the fullest extent permitted by law the provisions,
18 rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision
19 under federal or state law that purports to limit the scope of a general release. Plaintiff, for himself,
20 has read Section 1542 of the Civil Code of the State of California, which provides as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
22 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
23 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
24 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
25 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
26 DEBTOR OR RELEASED PARTY.

27 Plaintiff understands that Section 1542 gives the right not to release existing claims of
28 which he is not now aware, unless Plaintiff voluntarily chooses to waive this right. Having been

1 so apprised, Plaintiff nevertheless voluntarily waives his rights described in Section 1542, and
2 elect to assume all risks for claims that now exist in his favor, known or unknown. This release
3 specifically excludes claims for unemployment insurance, disability, social security, and workers
4 compensation (with the exception of claims arising pursuant to California Labor Code Sections
5 132(a) and 4553).

6 69. Neutral Employment Reference: In the event that any potential or future employers
7 of Plaintiff request a reference regarding Defendant's employment of Plaintiff, Defendant shall
8 not refer to the Action or this Settlement. This provision applies only to requests for employment
9 reference directed to Defendant.

10 70. Nullification of Settlement Agreement: In the event that: (a) the Court does not
11 finally approve the Settlement as provided herein; (b) the Court strikes or does not approve any
12 material term of this Settlement Agreement; or (c) the Settlement does not become final as written
13 and agreed to by the Parties for any other reason, then this Settlement Agreement, and any
14 documents generated to bring it into effect, will be null and void, all amounts deposited into the
15 QSF will be returned to Defendant, and the Parties shall be returned to their original respective
16 positions. Any order or judgment entered by the Court in furtherance of this Settlement
17 Agreement will likewise be treated as void from the beginning. Should the Court fail to approve
18 this Settlement for any reason, the Parties agree that they will return to and attend mediation with
19 a mutually agreed Mediator in an effort to reach a settlement that may be approved by the Court.

20 71. Preliminary Approval Hearing: Plaintiff will obtain a hearing before the Court to
21 request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
22 Approval Order for: (a) conditional certification of the Settlement Class for settlement purposes
23 only; (b) Preliminary Approval of the proposed Settlement Agreement; and (c) setting a date for
24 a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for
25 the Notice to be sent to all Class Members as specified herein. In conjunction with the Preliminary
26 Approval hearing, Plaintiff will submit this Agreement, which sets forth the terms of the
27 Settlement, and will include the proposed Notice attached as Exhibit A. Defendants agree that
28 they will not oppose Plaintiff's Motion for Preliminary Approval except to correct any material

misrepresentations or mischaracterizations in Plaintiff's Motion. Class Counsel further agrees that it/she/he will provide all necessary notices to the LWDA of the settlement concurrently with Plaintiff's Motion for Preliminary Approval. Any failure by the Court to fully and completely approve the Agreement as to the Action will result in this Settlement Agreement entered into by the Parties, and all obligations under this Settlement Agreement being nullified and voided.

72. Final Settlement Approval Hearing and Entry of Judgment: Upon expiration of the deadlines to postmark Requests for Exclusion, Objections to the Settlement Agreement, or Workweek disputes, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the amounts properly payable for: (a) Individual Settlement Payments; (b) the Attorneys' Fees and Costs; (c) the Class Representative Incentive Payment; and (d) the Settlement Administration Costs. Class Counsel will be responsible for drafting all documents necessary to obtain Final Approval. Any failure by the Court to fully and completely approve the Settlement Agreement as to all of the Action, or the entry of any Order by another Court with regard to any of the Action which has the effect of modifying material terms of this Agreement or preventing the full and complete approval of the Settlement Agreement as written and agreed to by the Parties, will result in this Agreement and all obligations under this Agreement being null and void. Defendant agree they shall not oppose the granting of the Motion for Final Approval except to correct any material misrepresentations or mischaracterizations in Plaintiff's Motion.

73. Court Approval: If the Court fails to approve this Settlement for any reason, the Parties agree to attend mediation again in an effort and cooperate in good faith to reach a settlement approved by the Court. However, if ultimately after submitting the settlement for approval to the Court as set forth in the Settlement Agreement, any Court declines to enter the preliminary approval order, the final approval order, or judgment in substantially the form submitted by the Parties, or if the Stipulation of Settlement as agreed does not become final because of appellate court action, the terminating Party shall give to the other Party (through its/her/their counsel) written notice of its decision to terminate no later than fourteen (14) calendar days after receiving notice that one of the enumerated events has occurred. Termination shall have

the following effects:

- a. The Settlement Agreement shall be terminated and shall have no force or effect, and no Party shall be bound by any of its terms.
- b. In the event the Settlement Agreement is terminated, Defendant shall have no obligation to make any payments to any party, Class Member, the State of California, PAGA Member or attorney.
- c. The preliminary approval order, final approval order and judgment shall be vacated.
- d. The Stipulation of Settlement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions prior to the Settlement.
- e. Except as otherwise discoverable, the Settlement Agreement, nor any ancillary documents, actions, statements or filings in furtherance of settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in this action or any other action for any purpose whatsoever.
- f. Plaintiff shall destroy all documents produced by Defendant pursuant to the Parties' agreement to exchange pre-mediation discovery.

74. Judgment and Continued Jurisdiction: Upon Final Approval of the Settlement by the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the Judgment to the Court for its approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement; (b) Settlement administration matters; and (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

75. Exhibits Incorporated by Reference: The terms of this Settlement include the terms set forth in any attached Exhibit(s), which are incorporated by this reference as though fully set forth herein. Any Exhibit(s) to this Settlement are an integral part of the Settlement.

76. Entire Agreement: This Settlement Agreement and any attached Exhibit(s) constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

1 77. Amendment or Modification: Subject to the Court's approval, this Settlement
2 Agreement may be amended or modified only by a written instrument signed by counsel for all
3 Parties or their successors-in-interest.

4 78. Binding on Successors and Assigns: This Settlement Agreement will be binding
5 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
6 defined.

7 79. California Law Governs: All terms of this Settlement Agreement and Exhibit(s)
8 hereto will be governed by and interpreted according to the laws of the State of California.

9 80. Execution and Counterparts: This Settlement Agreement is subject only to the
10 execution of all Parties. However, the Settlement Agreement may be executed in one or more
11 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
12 of the signature page, will be deemed to be one and the same instrument provided that counsel
13 for the Parties will exchange among themselves original signed counterparts.

14 81. Acknowledgement that the Settlement is Fair and Reasonable: The Parties believe
15 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have
16 arrived at this Settlement after arm's-length negotiations and in the context of adversarial
17 litigation, taking into account all relevant factors, present and potential. The Parties further
18 acknowledge that they are each represented by competent counsel and that they have had an
19 opportunity to consult with their counsel regarding the fairness and reasonableness of this
20 Settlement.

21 82. Invalidity of Any Provision: Before declaring any provision of this Agreement
22 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible
23 consistent with applicable precedents so as to define all provisions of this Agreement valid and
24 enforceable.

25 83. Waiver of Certain Appeals: The Parties agree to waive appeals and to stipulate to
26 class certification for purposes of this Settlement only; except, however, that either party may
27 appeal any court order that materially alters the Settlement Agreement's terms.

28 84. Class Action Certification for Settlement Purposes Only: The Parties agree to

1 stipulate to class action certification only for purposes of the Settlement. If, for any reason, the
2 Settlement is not approved, the stipulation to certification will be void. The Parties further agree
3 that certification for purposes of the Settlement is not an admission that class action certification
4 is proper under the standards applied to contested certification motions and that this Agreement
5 will not be admissible in this or any other proceeding as evidence that either: (a) a class action
6 should be certified or (b) Defendant is liable to Plaintiff or any Class Member, other than
7 according to the Settlement's terms.

8 85. Non-Admission of Liability: The Parties enter into this Agreement to resolve the
9 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
10 litigation. In entering into this Agreement, Defendant does not admit, and specifically deny, it has
11 violated any federal, state, or local law; violated any regulations or guidelines promulgated
12 pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached
13 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
14 engaged in any other unlawful conduct with respect to their employees. Neither this Agreement,
15 nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed
16 as an admission or concession by Defendant of any such violations or failures to comply with any
17 applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this
18 Agreement and its terms and provisions shall not be offered or received as evidence in any action
19 or proceeding to establish any liability or admission on the part of Defendant or to establish the
20 existence of any condition constituting a violation of, or a non-compliance with, federal, state,
21 local or other applicable law.

22 86. Captions: The captions and section numbers in this Agreement are inserted for the
23 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
24 provisions of this Agreement.

25 87. Waiver: No waiver of any condition or covenant contained in this Settlement
26 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
27 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
28 right or remedy.

1 88. Dispute About Terms: Should a dispute arise about the terms of this Agreement,
2 such disputes shall be submitted to Kevin Barnes, Esq. for consultation.

3 89. Enforcement Action: In the event that one or more of the Parties institutes any
4 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
5 Settlement or to declare rights and/or obligations under this Settlement, the successful Party or
6 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'
7 fees and costs, including expert witness fees incurred in connection with any enforcement actions.

8 90. Mutual Preparation: The Parties have had a full opportunity to negotiate the terms
9 and conditions of this Agreement. Accordingly, this Agreement will not be construed more
10 strictly against one Party than another merely by virtue of the fact that it may have been prepared
11 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
12 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

13 91. Representation By Counsel: The Parties acknowledge that they have been
14 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
15 and that this Agreement has been executed with the consent and advice of counsel and reviewed
16 in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the
17 Agreement.

18 92. All Terms Subject to Final Court Approval: All amounts and procedures described
19 in this Settlement Agreement herein will be subject to final Court approval.

20 93. Cooperation and Execution of Necessary Documents: The Parties agree to
21 cooperate to promote participation in the Settlement, and in seeking court approval of the
22 Settlement. The Parties and their counsel agree not to take any action to encourage any Class
23 Members to opt out of and/or object to the Settlement. Defendant agrees not to obtain waivers or
24 *Pick-Up Stix* agreements from the Class Members during the Settlement approval process and
25 will work in good faith to reach an agreement approved by the Court. Defendant further agrees
26 that they will not oppose Plaintiff's motion for preliminary approval and/or motion for final
27 approval, so long as the motion for preliminary approval and/or motion for final approval are
28 entirely consistent with the terms of this Settlement Agreement.

94. Confidentiality: Plaintiff and Class Counsel will not make any public disclosure of the Settlement until after the filing of the motion for preliminary approval of the Settlement. Plaintiff and his counsel represent that they have not made any such disclosure. Plaintiff and Class Counsel shall not encourage members of the Settlement Class to opt-out or object, or any PAGA Members to intervene or object. Class Counsel will take all steps necessary to ensure that Plaintiff is aware of, and will encourage him to adhere to, the restriction against any public disclosure of the Settlement until after the Settlement is preliminarily approved by the Court. Thereafter, Class Counsel and named Plaintiff agrees not to publicize the terms of this Settlement via any medium, including but not limited to, any newspaper, journal, magazine, website, online reporter of settlements, social media, and/or direct mail.

95. Binding Agreement: The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality provisions that otherwise might apply under federal or state law.

DATED: 9/19/2024

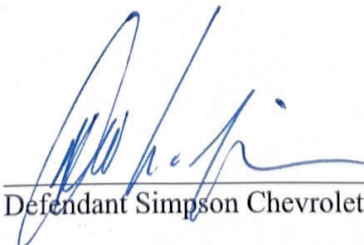
DocuSigned by:



E75D44A5EADDAEC

Plaintiff Cesar Guillen Hernandez

DATED: 9/20/24



Defendant Simpson Chevrolet of Irvine

Name: DAVID A. SIMPSON

Title: PRESIDENT

1 **Approved as to Form:**

2
3 Dated: September 18, 2024

PROTECTION LAW GROUP, LLP

5 By: 

6 Susan Huerta
7 Brendan J. Burton
8 Shadi Sahebghalam
9 *Attorneys for Plaintiff*
10 CESAR GUILLEN HERNANDEZ

11 Dated: September 20 2024

GOE FORSYTHE & HODGES LLP

13 By: 

14 Ronald Scott Hodges
15 Lauren Elizabeth Raya
16 Jeff M. Yostano
17 *Attorneys for Defendant*
18 SIMPSON CHEVROLET OF IRVINE
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EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Hernandez v. Simpson Chevrolet of Irvine

Orange County Superior Court, Case No. 30-2024-01376148-CU-OE-CXC

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

To: All current and former hourly paid or non-exempt employees employed by Simpson Chevrolet of Irvine, within the State of California at any time between January 25, 2020, and October 29, 2024.

BASIC INFORMATION

1. What Is This Settlement About?

A lawsuit was commenced by Cesar Guillen Hernandez (“Plaintiff”), former employee of Simpson Chevrolet of Irvine (“Defendant”) (collectively with Plaintiff, the “Parties”), on January 25, 2024. The Parties agreed to allow the filing of an amended complaint adding a cause of action under the Private Attorneys General Act of 2004 (“PAGA”). On February 20, 2024, Plaintiff filed his amended complaint under PAGA (the “Lawsuit”).

The Lawsuit claims that Defendant violated sections of the California Labor Code and California Business and Professions Code. Specifically, Plaintiff alleges that Defendant failed to provide compliant meal and rest periods or pay meal and rest break premiums, did not properly pay employees overtime or pay minimum wage for all time worked, did not keep accurate and complete payroll records, did not provide accurate wage statements, did not timely pay all wages during employment and all wages owed at termination of employment, failed to reimburse employees for business expenses, and maintained unfair business practices. The settlement also seeks to recover penalties pursuant to the PAGA. The Lawsuit alleges that Defendant violated the California Labor Code and the California Business and Professions Code, entitling Class Members to, *inter alia*, damages, penalties, and restitution. Defendant deny all alleged violations and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the Lawsuit.

2. Why Is This A Class Action?

In a class action, one or more people called the Class Representative (in this case, Cesar Guillen Hernandez) sue on behalf of people who appear to have similar claims. All these people are referred to here as Class Members. In a class action, the court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The Orange County Superior Court (“Court”) is in charge of this class action.

3. Why Is There A Settlement?

The Court has not decided in favor of the Plaintiff or Defendant. Instead, both sides agreed to a settlement, which is memorialized in the Joint Stipulation of Class Action and PAGA Settlement (“Agreement” or “Settlement”).

On [REDACTED], the Court granted preliminary approval of the Settlement, appointed Plaintiff Roberto Hernandez as the Class Representative, and appointed his attorneys Protection Law Group, LLP as counsel for the Class (“Class Counsel”). The Class Representative and Class Counsel think the Settlement is best for the Class.

WHO IS IN THE SETTLEMENT?

4. How Do I Know If I Am Part Of The Settlement?

You are part of the Settlement, and a Class Member, if you were employed by Defendant as an hourly paid non-exempt employee in the State of California at any time between January 25, 2020, to October 29, 2024 (the “Class Period”).

You are part of the Settlement, and a PAGA Member, if you were employed by Defendant as an hourly paid non-exempt employee in the State of California at any time between December 13, 2022, to October 29, 2024 (the “PAGA Period”).

THE SETTLEMENT BENEFITS—WHAT YOU GET

5. What Does The Settlement Provide?

The Settlement provides that Defendant will pay a maximum amount of Five Hundred and Sixty-Five Thousand Dollars (\$565,000.00) (“Gross Settlement Amount”). This includes all costs and attorneys’ fees for Class Counsel.

The “Net Settlement Amount” is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Gross Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed 35% of the Gross Settlement Amount or Three Hundred and Fifteen Thousand Dollars (\$197,750.00);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Thirty Thousand Dollars (\$20,000.00);
- C. **Enhancement Payment to the Class Representative** in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) for Plaintiff Cesar Guillen Hernandez;
- D. **Settlement Administration Costs** in an amount not to exceed Nine Thousand Two Hundred and Fifty Dollars (\$9,000.00); and
- E. **PAGA Penalties** in the amount of Seventy-Five Thousand Dollars (\$60,000.00) for the settlement of claims arising under PAGA. Seventy-five percent (75%) of this amount (\$45,000.00) shall be paid to the California Labor and Workforce Development Agency (“LWDA”). The remaining twenty-five percent (25%) of this amount (\$15,000.00) will be distributed to PAGA Members.

The amount you are eligible to receive from the Settlement, your “Individual Settlement Payment” will be determined on a *pro rata* basis, based on the number of weeks you worked in California as an hourly paid non-exempt employee of Defendant between January 25, 2020, to October 29, 2024 (“Workweeks”). Your Individual Settlement Payment includes both your estimated share of the Net Settlement Amount and, if eligible, your share of the PAGA Penalties.

Your Individual Settlement Payment will be apportioned as twenty percent (20%) wages; forty percent (40%) shall be allocated as interest; and forty percent (40%) shall be allocated as penalties. The wage portion of the Individual Settlement Payment will be subject to tax withholdings customarily made from an employee’s wages and all other authorized and required withholdings and will be reported on a W-2 Form. Both employee and employer-side payroll taxes on the wage portion of Individual Settlement Payments shall be deducted from the

Net Settlement Amount. The penalties and interest portions of each Class Member's settlement payment shall be subject to all authorized and required withholdings other than the tax withholdings customarily made to an employee's wages and will be reported on an IRS Form 1099.

You worked **XXX Workweeks during the Class Period. Your Individual Settlement Payment is \$**XXX.XX**. The amount of the payment may change depending on the number of timely and valid requests for exclusions submitted, if any, required tax withholdings, and the terms of the Court's final order approving the Settlement.**

You worked **XXX Pay Periods during the PAGA Period. Your estimated share of the PAGA Penalties is \$**XXX.XX**.**

The Individual Settlement Payment was determined based on Defendant's records of your employment between December 13, 2022, to October 29, 2024, and is presumed correct. Your PAGA Penalties were determined based on Defendant's records of your employment between December 13, 2022, to October 29, 2024. If you dispute the accuracy of Defendant's records as to the number of Workweeks worked during the Class Period or Pay Periods during the PAGA Period, provide any documentation you have supporting such dispute by **[RESPONSE DEADLINE]**. All disputes regarding your Workweeks and Pay Periods will be resolved and decided by the Settlement Administrator subject to review by the Court. The Settlement Administrator's contact information is listed below:

[Settlement Administrator]

[Address]

[Telephone No.]

[Fax No.]

HOW TO GET A PAYMENT FROM THE SETTLEMENT

6. How Can I Get A Payment?

You do not have to do anything to qualify for a payment of your portion of the Settlement.

7. What Am I Giving Up If I Do Not Request To Be Excluded From The Settlement?

Upon the complete funding of the Gross Settlement Amount, in exchange for the consideration set forth by the Settlement, Class Members who do not submit a timely, valid request for exclusion will release the "Released Parties" from the "Released Class Claims" that arose during the "Class Period."

The "Released Parties" include Defendant Simpson Chevrolet of Irvine and each of its past, present and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, as well as each of its or their past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant.

The "Released Class Claims" include all claims, rights, demands, liabilities and causes of action that are alleged, or reasonably could have been alleged based on the same or similar facts and claims asserted in the operative Complaint in this Action including the following claims:

- a. (i) failure to pay all regular wages, minimum wages and overtime wages due; (ii) failure to provide meal periods or compensation in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof; (iv) failure to reimburse necessary business expenses; (v) failure to provide complete, accurate wage

statements; (vi) failure to pay wages timely at time of termination or resignation; (vii) failure to timely pay wages during employment; (viii) failure to keep accurate and complete payroll records; (ix) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative Complaint.

- b. Any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices, punitive damages, civil penalties under state and Federal labor codes, PAGA penalties, attorneys' fees and costs, alleged or which could have been alleged under the facts, allegations and/or claims pleaded in the complaints filed as part of the operative Complaint (the First Amended Complaint).

The "Class Period" during which the release of Released Class Claims pertains is from January 25, 2020, to October 29, 2024.

All Class Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all Released Class Claims arising under PAGA with respect to all of the Released Parties irrespective of whether a Class Member submits a request for exclusion.

The "Released PAGA Claims" means any and all PAGA claims that could have been asserted under the California Labor Code Private Attorneys General Act of 2004 based on the same or similar factual allegations and claims in the operative Complaint (the First Amended Complaint) in this Action or any PAGA notice submitted by Plaintiff to the LWDA, for the PAGA Period.

The "PAGA Period" during which the release of the Released PAGA Claims pertain is from December 13, 2022, to October 29, 2024.

EXCLUDING YOURSELF FROM THE RELEASE OF NON-PAGA CLAIMS

If you want to keep the right to sue or continue to sue Defendant with respect to the Released Class Claims (other than those which arise under the PAGA (California Labor Code sections 2698, *et seq.*), then you must submit a request for exclusion in conformity with the requirements set forth herein. If you exclude yourself, you will not receive payment from the Net Settlement Amount. However, if eligible, you will still receive a payment in an amount equal to your estimated *pro rata* share of the PAGA Penalties because a request for exclusion does not apply to the PAGA claim.

8. How Can I Not Participate In The Settlement?

If you do not wish to take part in the Class Settlement, you must submit a written request for exclusion to the Settlement Administrator by no later than [RESPONSE DEADLINE]. You must include your name, address, telephone number and the last four digits of your social security number and/or Employee ID number. Your request for exclusion must also include a statement that you do not wish to be included in this action. There is no specific language required to opt-out, but you may state something similar to the following: "I wish to exclude myself from the class action settlement reached in the matter of *Hernandez v. Simpson Chevrolet of Irvine*. I understand that by excluding myself I will not receive money from the class settlement."

The written request for exclusion must be mailed to the Settlement Administrator at the address listed below, post-marked by [RESPONSE DEADLINE]. You cannot exclude yourself by phone.

[Settlement Administrator]

[Address]

[Telephone No.]

[Fax No.]

If you ask to be excluded, you will not receive payment of any portion of the Net Settlement Amount and you cannot object to the Settlement. You will not be legally bound by the release of Released Class Claims (except for Released PAGA Claims that arise under the PAGA (California Labor Code sections 2698 *et seq.*)).

If you ask to be excluded, you may be able to sue Defendant and/or the Released Parties or continue any suit you have pending against Defendant or the Released Parties, regarding the Released Class Claims (except for Released PAGA Claims that arise under the PAGA (California Labor Code sections 2698, *et seq.*)).

9. If I Don't Exclude Myself, Can I Sue Defendant For The Same Thing Later?

No. Unless you submit a request for exclusion, you give up the right to sue Defendant and the other Released Parties for the Released Class Claims. If you have a pending lawsuit involving the Released Class Claims, speak to your lawyer in that lawsuit immediately.

10. If I Exclude Myself, Can I Get Money From This Settlement?

No. You will not receive money from the Net Settlement Amount. If you worked between January 25, 2020, to October 29, 2024, you will still receive a share of the PAGA Penalties as an opt-out request does not apply to the PAGA claim.

THE LAWYERS REPRESENTING THE PROPOSED CLASS

11. Do I Have A Lawyer In This Case?

The Court has approved PROTECTION LAW GROUP, LLP as Class Counsel. The firm's contact information is as follows:

PROTECTION LAW GROUP, LLP

Heather Davis
Amir Nayebdadash
Susan Huerta
Brendan J. Burton
Shadi Sahebghalam
149 Sheldon Street
El Segundo, California 90245
Telephone: (424) 290-3095

Class Counsel will ask the Court for attorneys' fees of up to thirty-five percent of the Gross Settlement (estimated to be \$197,750.00) and reimbursement of litigation costs/expenses of up to \$20,000.00. These amounts are subject to Court approval and the Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

You can object to the Settlement or some part of it.

12. How Do I Tell The Court If I Don't Like The Settlement?

If you are a Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To object, you must mail your objection to the

Settlement Administrator no later than [RESPONSE DEADLINE]. Your objection must include (i) your full name, current address, and signature; (ii) a clear reference to the Lawsuit; and (iii) a statement of the specific reasons why you believe the Settlement is unfair or why you object to the Settlement. All objections shall be signed by the objecting Class Member or the Class Member's legally authorized representative. You may also come to the Final Approval Hearing on [DATE] and make an objection at that time, regardless of whether you submitted a written objection.

13. What Is The Difference Between Objecting And Excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement ("Final Approval Hearing"). You may attend, but you do not have to attend.

14. When And Where Will The Court Decide Whether To Approve The Settlement?

The Court will hold the Final Approval Hearing at [] a.m./p.m. on [], at the Orange County Superior Court, Civil Complex Center, located at 751 Santa Ana Boulevard, Santa Ana, California, 92701.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them.

15. Do I Have To Come To The Hearing?

No. If you agree to the Settlement, you do not have to come to Court to talk about it. However, you may attend either virtually or in-person. You may also retain your own lawyer at your expense to attend on your behalf.

The Final Approval Hearing may be postponed without further notice to Settlement Class members. Any changes to the date, time, or location of the Final Approval Hearing will be posted on the Settlement Administrator's website at (<http://.com>).

16. How Will I Learn If The Settlement Was Approved?

A notice of final judgment will be posted on the Settlement Administrator's website located at [www.\[\].com](http://.com).

IF YOU DO NOTHING

17. What Happens If I Do Nothing At All?

If you do nothing, you will receive your share of the Settlement, and you will release the Released Class Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant or the other Released Parties about the Released Class Claims, ever again. Your Individual Settlement Payment will be mailed to you and remain valid and negotiable for 180 days. If you do not cash your settlement check

within 180 days, these funds will be transferred to the Controller of the State of California's Unclaimed Property Fund. You may then claim these funds from there via https://www.sco.ca.gov/upd_msg.html.

GETTING MORE INFORMATION

18. How Do I Get More Information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by viewing the settlement located on the Settlement Administrator's website at [REDACTED] or by contacting the Settlement Administrator or Class Counsel.

WHAT IF MY INFORMATION CHANGES?

19. What If My Contact Information Changes?

It is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by contacting the Settlement Administrator.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR
THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.**

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EXHIBIT 3

From: [DIR PAGA Unit](#)
To: [Brendan Burton](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Monday, November 18, 2024 7:02:29 AM

11/18/2024 07:02:01 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.