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 16 of Defendants in the State of California

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 18 **COUNTY OF SAN DIEGO**

19 MARCO SANCHEZ AND CARLOS VEAL,
 20 individually and on behalf of all similarly
 21 situated employees of Defendants in the State of
 22 California,

23 Plaintiffs,

24 v.

25 EVANS TIRE AND SERVICE CENTERS,
 26 INC., and DOES 1 THROUGH 50, inclusive,

27 Defendants.

Case No.: 37-2018-00063516-CU-OE-CTL

[IMAGED FILE]

**JOINT STIPULATION FOR CLASS ACTION
 SETTLEMENT AND RELEASE**

Complaint Filed: December 17, 2018

INTRODUCTION AND RECITALS

1. This Stipulation for Class Action Settlement (“Stipulation” or “Agreement”) is made by and between the Plaintiffs Marco Sanchez and Carlos Veal (“Plaintiffs”), on behalf of themselves and all members of the Settlement Class, as defined below, on the one hand, and Defendant Evans Tire and Service Centers, Inc. (“Evans” or “the Defendant”) (collectively, the “Parties”) on the other hand, in the consolidated action entitled *Marco Sanchez, et. al. v. Evans Tire and Service Centers, Inc.* (San Diego County, Case No.: 37-2018-00063516-CU-OE-CTL).

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1 2. Plaintiffs Sanchez and Veal provided written notice to the California Labor and Workforce
2 Development Agency (“LWDA”) on December 17, 2018. Plaintiffs filed a class and PAGA action on
3 December 17, 2018, and on April 22, 2019 amended their complaint to add a PAGA cause of action,
4 respectively, in San Diego County Superior Court. The operative complaint allege the following causes
5 of action on behalf of Plaintiffs and the members of the putative class: (1) Failure to Provide Meal Periods;
6 (2) Failure to Provide Rest Periods; (3) Failure to Minimum and Regular Wages; (4) Failure to Pay All
7 Overtime Wages; (5) Failure to Indemnify for Business Expenses (Lab. Code § 2802); (6) Failure to
8 Provide Accurate Itemized Wage Statements; (7) Failure to Timely Pay All Wages Due Upon Separation
9 of Employment; (8) Violation of California Business and Professions Code §17200; and (9) Violation of
10 Cal. Labor Code §§ 2698, et seq. (“PAGA”).

11 3. Evans has denied and continues to deny each of the claims and contentions alleged by
12 Plaintiffs in the Litigation (as defined in Paragraph 13.M herein).

13 4. For settlement purposes only, the Parties agree to a settlement class (“Settlement Class” or
14 “Class”) as defined in Paragraph 13.C. herein. By this Stipulation, the Parties expressly state their desire
15 to settle the claims and allegations raised by Plaintiffs and Class Members in the Litigation. The effective
16 date of the settlement is the “Settlement Effective Date” as that term is defined in this Stipulation. If for
17 any reason the settlement is not approved, this Stipulation shall become null and void and will be of no
18 force or effect.

19 5. Plaintiffs contend that Evans has violated California wage and hour laws, as described
20 herein, and that this case is appropriate for class certification. Evans denies any liability or wrongdoing
21 of any kind associated with the claims alleged in the Litigation, and further denies that this Litigation is
22 appropriate for class treatment for any purpose other than settling this Litigation. Defendant contends,
23 among other things, that it complied at all times with the California Labor Code, applicable California
24 Wage Orders and the California Business and Professions Code.

25 6. The parties engaged in significant informal discovery in this action. Defendant produced
26 thousands of pages of responsive documents including all of the pay records for the non-exempt
27 employees in the Class, employee handbooks, job descriptions for sales associates and mechanics, and
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1 policies relating to meal breaks, rest breaks, and commission pay. Plaintiffs also have obtained Plaintiffs’
2 time and pay records, and personnel files. In addition, Plaintiffs have obtained the names and contact
3 information of all of Defendant’s current and former employees during the Class Period and have
4 conducted detailed interviews.

5 7. The Parties have performed a thorough study of the law relating to the claims alleged in
6 the Litigation and based on that investigation and discovery, and taking into account the heavily contested
7 issues, the expense and time necessary to pursue prosecution and defense of the Litigation through trial,
8 the risks and costs of further prosecution of the Litigation, the uncertainty of complex litigation, the
9 fairness and reasonableness of the settlement agreed to by the Parties, and the best interest of the Class
10 Members to whom substantial benefits will accrue, the Parties have agreed to the settlement described in
11 this Stipulation.

12 8. The Parties engaged in arms-length negotiations, and participated in a full-day Mediation
13 on October 29, 2019, with Lynn S. Frank, Esq., (the “Mediation”). With the assistance of the mediator,
14 the Parties were able to settle at mediation.

15 9. Nothing contained in this Stipulation, including its existence, shall be construed or deemed
16 as an admission of liability, culpability, negligence, or wrongdoing on the part of Evans. Nothing in this
17 Stipulation shall constitute an admission by Evans – except for settlement purposes only – that the
18 Litigation was properly brought as a class or representative action. Settlement of the Litigation, the
19 negotiation and execution of this Stipulation, and all acts performed or documents executed pursuant to
20 or in furtherance of this Agreement or the settlement: (i) are not, shall not be deemed to be, and may not
21 be used, as an admission or evidence of any wrongdoing or liability on the part of Evans or of the truth of
22 any factual allegations in the Litigation; (ii) are not, shall not be deemed to be, and may not be used as, an
23 admission or evidence of any fault or omission on the part of Evans in any civil or administrative
24 proceeding in any court, administrative agency or other tribunal; and (iii) are not, shall not be deemed to
25 be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for
26 class certification or administration other than for purposes of administering this Stipulation.

27 10. Based on the available record, and their own independent investigation and evaluations,
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1 counsel for Plaintiffs and the Class Members are of the opinion that the settlement for the consideration
2 and on the terms set forth in this Stipulation is fair, reasonable and adequate and is in the best interest of
3 the Plaintiffs and Class Members in the light of all known facts, circumstances and risks inherent in
4 litigation, including potential appellate issues.

5 11. The purpose of this Stipulation is to settle and compromise the Covered Claims alleged by
6 Plaintiffs and Class Members against Evans and the Released Parties (as defined below) and as described
7 in this Stipulation, including the wage and hour claims which were pled or could have been pled based on
8 the factual allegations asserted in the Litigation for the time period from December 17, 2014 to October
9 18, 2018 (the “Class Period”).

10 12. It is agreed by and among Plaintiffs and Evans that this Litigation and the damages,
11 injunctions, remedies, penalties and interest arising out of the Litigation be settled and compromised as
12 between Plaintiffs and Class Members and Evans, subject to the terms and conditions set forth in this
13 Stipulation and the preliminary and final approval of the Court, with judgment entered in accordance with
14 such order of final approval.

15 **DEFINITIONS**

16 13. In addition to the terms previously defined above, the terms below have the following
17 meanings, with the understanding that the definitions will have no meaning or effect if the settlement is
18 not approved:

19 A. **Administrative Costs.** All administrative costs of settlement, including cost of notice to
20 the Settlement Class, claims administration (including preparation of required tax reporting forms and
21 withholding of required taxes), and any fees and costs included or charged by the Settlement Administrator
22 in connection with the execution of its duties under this Stipulation, but not to exceed the total amount of
23 \$12,000.00.

24 B. **Agreement.** The terms “Agreement” or “Settlement Agreement” are used synonymously
25 herein to mean this Stipulation.

26 C. **Class, Class Members and Settlement Class.** For settlement purposes only, the Parties
27 agree pursuant to California Code of Civil Procedure section 382 to the certification of a class (“Class” or
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1 “Settlement Class”) means all individuals who are members of the, the Non-Exempt Class and/or
2 Mechanic and Sales Associate Subclass, as defined herein. The Non-Exempt Class is defined as all current
3 and former non-exempt employees who worked for Defendant at any time from December 17, 2014 to
4 October 18, 2018. The Mechanics and Sales Associate Subclass means all individuals who worked for
5 Evans Tire in California as Mechanics and/or Sales Associates at any time from December 17, 2014 to
6 October 18, 2018. “Sales Associate” includes all individuals selling goods or services for Evans, whether
7 at an in-store location or from a call center, who was paid on a commission and/or piece rate basis. The
8 total class size is approximately 500 non-exempt employees.

9 **D. Class Counsel.** The term “Class Counsel” means, the law firm Graham Hollis, APC. The
10 term “Class Counsel” shall be used synonymously with the term “Plaintiffs’ Counsel.”

11 **E. Class Period.** The term “Class Period” as used herein means the period from December
12 17, 2014 to October 18, 2018, unless otherwise mutually agreed by the Parties.

13 **F. Compensable Workweek.** The term “Compensable Workweek” shall mean a workweek
14 during which a Class Member received pay for work performed while employed by Evans during the
15 period from December 17, 2014 to October 18, 2018. A Compensable Workweek includes any week in
16 which a Class Member actively worked at least one day of the week. A Compensable Workweek excludes
17 every full week during which the Class Member was on vacation or on an unpaid leave of absence, even
18 if the Class Member was receiving workers’ compensation, disability insurance, Social Security, or Paid
19 Family Leave benefits during the unpaid leave. Workweeks of Class Members that opt out of the
20 Settlement will not be included in the total number of workweeks for purposes of calculating and
21 distributing the settlement payments to the Class Members. The total compensable workweeks are
22 estimated to be approximately 35,000 for the Class Period for the Non-Exempt Class. If the number of
23 Compensable Workweeks exceeds 38,500 for the Non-Exempt Class (i.e., an increase of more than 10%),
24 the Gross Settlement Amount will increase proportionately.

25 **G. “Covered Claims” or “Class Claims”.** Any and all claims, demands, rights, liabilities,
26 and causes of action that were or could have been pleaded under local, state or federal law arising out of,
27 relating to, or based on any facts, transactions, events, policies, occurrences, acts, disclosures, statements,
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1 omissions, or failures to act pleaded in the operative complaint and PAGA complaint, including but not
2 limited to claims related to unpaid wages and overtime compensation, meal and rest break violations, sick
3 leave violations, untimely final paychecks, inaccurate itemized wage statements, business expenses, unfair
4 business practices, and for penalties and unpaid wages under the Private Attorney General Act..

5 **H. Defendant or Evans.** The term “Defendant” or “Evans” as used herein means Evans Tire
6 and Service Centers, Inc., and for purposes of the Release shall include its respective parents, subsidiaries,
7 affiliates, related entities, predecessors or successors in interest, and its and each of their respective
8 owners, officers, directors, shareholders, partners, members, managing agents, employees, consultants,
9 attorneys, joint venturers, agents, successors, assigns, insurers, or reinsurers of any of them, and other
10 related persons and entities (the “Released Parties”).

11 **I. Employee Taxes and Employer Taxes.** “Employee Taxes” are federal, state and local
12 income taxes, the employee’s share of contributions under the Federal Insurance Contribution Act
13 (“FICA”), including Social Security and Medicare contributions, and any other federal, state and local
14 taxes (including State Disability Insurance and Paid Family Leave contributions) required by law to be
15 withheld from the gross amount paid on an employee’s paycheck, which will be withheld from the wage
16 portions of the Net Settlement Payments made to the Class Members. “Employer Taxes” are taxes and
17 contributions imposed by law to be paid by the employer in addition to the gross wage amount paid on an
18 employee’s paycheck, including FICA, the Federal Unemployment Tax Act (“FUTA”), and any similar
19 state and local taxes and contributions required of employers (such as for unemployment insurance), which
20 will be paid by Defendant outside of the Settlement amounts on the wage portions of the Net Settlement
21 Payments made to the Class Members.

22 **J. Excluded Class Member.** The term “Excluded Class Member” means a Class Member
23 who has timely submitted a written request to be excluded from the Settlement. To be valid, the Request
24 for Exclusion must: (a) state the full name, address, telephone number and last four digits of the Social
25 Security Number of the Class Member requesting exclusion; (b) clearly state that the Class Member
26 wishes to opt-out of the Class and be excluded from the Settlement; (c) be signed by the Class Member;
27 and (d) be properly and timely faxed or mailed to the Settlement Administrator prior to the Response
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1 Deadline (the “Request for Exclusion”). Excluded Class Members will not be included in the Settlement
2 and will have no right to receive any money under the Settlement or to object to the Settlement.

3 K. **Final Approval.** Final Approval means the Court’s order granting final approval of the
4 class action settlement based on the terms stated herein and the Court entering a final Judgment.

5 L. **Gross Settlement Amount or Settlement Amount.** The terms “Gross Settlement
6 Amount” or “Settlement Amount” as used herein means the maximum amount of money that Evans will
7 be obligated to pay under this Settlement, on a non-reversionary basis, which shall be the maximum sum
8 of Seven Hundred and Fifty Thousand Dollars (\$750,000), to resolve all claims, fees and costs relating to
9 this Settlement, including all Net Settlement Payments to the Settlement Class, the enhancement award to
10 Plaintiffs, the fees and costs to the Settlement Administrator, and the attorneys’ fees and costs awarded to
11 Class Counsel, but excluding Employer Taxes. Evans shall pay the Gross Settlement Amount, plus the
12 additional amount to cover the Employer Taxes, to the Settlement Administrator no later than 90 days
13 after Final Approval of the Class Action Settlement.

14 M. **Litigation.** The term “Litigation” as used herein means the allegations set forth by
15 Plaintiffs against Evans in the Class and PAGA Action Complaints as described in Paragraph 2 of this
16 Stipulation, and shall be used synonymously with the term “Action”.

17 N. **Net Settlement Amount.** The term “Net Settlement Amount” as used herein means the
18 amount of funds available for distribution to the Settlement Class after deducting from the Gross
19 Settlement Amount the following amounts: (i) the attorneys’ fees and costs awarded to Class Counsel; (ii)
20 the fees and costs awarded to the Settlement Administrator; and (iii) the enhancement award to Plaintiffs
21 as provided herein. From the Net Settlement Amount, as described herein, Net Settlement Payments (as
22 that term is defined herein) will be distributed by the Settlement Administrator to Class Members as more
23 fully described below.

24 The below chart provides an estimated calculation of the Net Settlement Amount to the Class
25 Members:

26	<u>Gross Settlement Amount:</u>	\$750,000.00
27	Attorneys’ Fees	- \$ 250,000.00

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1	Litigation Costs	- \$ 15,000.00
2	Enhancement Award	- \$ 14,000.00
3	Payment to LWDA for PAGA	- \$ 56,250.00
4	Administration Fees	- \$ 12,000.00
5		
6	<u>Net Settlement Amount:</u>	\$ 402,750.00

8 O. **Net Settlement Payments.** The term “Net Settlement Payment(s)” shall mean the
9 payments made to the Settlement Class from the Net Settlement Amount as part of the Settlement,
10 including wages (less Employee Taxes), penalties, and interest.

11 P. **Notice.** The Notice of Class Action Settlement ("Notice") to be approved by the Court
12 which will be mailed by the Settlement Administrator to each Class Member explaining the terms of the
13 Settlement. A copy of the Notice is attached hereto as Exhibit “1”.

14 Q. **Objection.** The terms “Objection” means, and refers to, a timely written objection to the
15 Settlement submitted to the Court by a Class Member on or prior to the Response Deadline in compliance
16 with the form and procedures set forth in the “**Objections**” section of this Agreement, provided that the
17 Class Member does not submit a Request for Exclusion.

18 R. **Plaintiffs.** The term “Plaintiffs” as used herein means Marco Sanchez and Carlos Veal.

19 S. **Preliminary Approval.** Preliminary Approval shall mean the Court's order granting
20 preliminary approval of the class action settlement based on the terms stated herein.

21 T. **Response Deadline** means the date by which each Class Member must fax or mail to the
22 Settlement Administrator a valid Request for Exclusion, or submit any disputes regarding the dates of
23 service and/or the number of Compensable Workweeks during the Class Period to the Settlement
24 Administrator, or submit any Objection to the Court. The Response Deadline will be sixty (60) calendar
25 days from the initial mailing of the Notice to the Class, except that the Response Deadline will be extended
26 by ten (10) calendar days for any Class Member who is re-mailed the Notice by the Settlement
27 Administrator, in which case the Response Deadline will be adjusted on the Notice to that Class Member.

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1 U. **Settlement.** The term “Settlement” means the agreement by the Parties to resolve the
2 Litigation pursuant to the terms and procedures set forth in this Agreement.

3 V. **Settlement Administrator.** The terms “Settlement Administrator” and “Administrator”
4 means Ilym Group, Inc., which will be responsible for the administration of the Settlement Payment, as
5 defined below, and all related matters, including the following duties: (i) prepare the Notice with the
6 number of Compensable Workweeks for each Class Member based on data provided by Evans; (ii) mail
7 the Notice to Class Members and perform address searches and re-mailings as necessary; (iii) notify the
8 Parties and track any submitted Requests for Exclusion (whether timely and untimely) or Objections filed
9 with the Court; (iv) notify the Parties of disputes regarding the number of workweeks by Class Members
10 and/or persons claiming to be Class Members and resolve any disputes resulting from same; (v) calculate
11 the amounts due to each Class Member pursuant to the Settlement, including the amount of Employee
12 Taxes and Employer Taxes; (vi) provide settlement payments and IRS W-2 and 1099 Forms to eligible
13 Class Members (those who do not Opt-Out of the Settlement) and to the relevant taxing authorities and
14 make all required withholdings and tax payments; (vii) make all other required settlement payments
15 pursuant to the terms of the Settlement and as directed by the Court; and (viii) perform such other duties
16 as are described in this Stipulation and/or as are customarily performed by settlement administrators.

17 W. **Settlement Effective Date or Effective Date.** The settlement embodied in this Stipulation
18 shall become effective after all of the following events have occurred: (1) the Stipulation has been
19 executed by all Parties and their counsel; (2) the Court has given preliminary approval to the Settlement;
20 (3) the notice packet has been sent to Class Members, providing them with an opportunity to verify their
21 estimated share of the Net Settlement Payments, Opt-Out of the Settlement or Object to the terms of the
22 Settlement; (4) the Court has held a final fairness hearing certifying the class, approving the Settlement
23 and entering a final order and judgment; and (5) if no Objection(s) are filed, five (5) calendar days after
24 the date of entry of the final judgment, but if any Objection(s) are filed, five (5) calendar days following
25 the date of expiration of the period for filing any appeal, or if an appeal is filed, then when the Settlement
26 is subsequently approved following the appeal and there is no possibility of any subsequent appeal or
27 other judicial review (the “Settlement Effective Date” or “Effective Date”). In the event that the Court
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1 does not approve the Settlement, or if the final order and judgment is reversed on appeal, then there shall
2 be no Settlement Effective Date and this Settlement Agreement shall become null and void.

3 **JURISDICTION**

4 14. The Court refers to and means the Superior Court of the State of California, County of San
5 Diego (the "Court"), and includes any Judge or Department assigned to approve the Settlement pursuant
6 to this Stipulation. The Court has jurisdiction over the Parties and the subject matter of this Litigation.
7 The Litigation includes claims that, while Evans denies them in their entirety, would, if proven, authorize
8 the Court to grant relief pursuant to the applicable statutes. After the Court grants final approval of the
9 Settlement ("Final Approval") and after it has entered a final judgment dismissing the Litigation with
10 prejudice ("Final Judgment"), the Court shall retain jurisdiction of this Action pursuant to California Code
11 of Civil Procedure section 664.6 solely for the purpose of interpreting, implementing, and enforcing this
12 Settlement consistent with the terms set forth herein.

13 **STIPULATION OF CLASS CERTIFICATION**

14 15. The Parties stipulate to the certification of this Settlement Class solely for purposes of the
15 Settlement only. This Stipulation is contingent upon the preliminary and final approval and certification
16 of the Settlement Class only for purposes of the Settlement. Should the Settlement not become final, for
17 whatever reason, the fact that the Parties were willing to stipulate provisionally to class certification as
18 part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue
19 of whether a class should be certified in a non-settlement context in the Litigation. Evans expressly
20 reserves its right to oppose class certification should this Settlement not become final.

21 **PRELIMINARY APPROVAL**

22 16. Plaintiffs will bring a motion before the Court for an order preliminarily approving the
23 Settlement, including the Notice as explained herein, and including a request for the Court to order the
24 conditional certification of the Settlement Class for settlement purposes only ("Preliminary Approval"),
25 which will be supported and not opposed by Evans. The date that the Court grants Preliminary Approval
26 of the Settlement will be the "Preliminary Approval Date." Class Counsel will prepare the Motion for
27 Preliminary Approval. The Motion for Preliminary Approval will also include a request for the Court to
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1 preliminarily appoint Plaintiffs’ Counsel as Class Counsel, to preliminarily approve Plaintiffs as the Class
2 Representative, to appoint Ilym Group, Inc. as the Settlement Administrator, to set a date for the Final
3 Approval Hearing, and to seek such other orders from the Court as are necessary to obtain Preliminary
4 Approval.

5 **STATEMENT OF NO ADMISSION**

6 17. Evans denies any and all liability to Plaintiffs and the Settlement Class upon any claim or
7 cause of action. This Agreement does not constitute, and is not intended to constitute an admission by
8 Evans as to the merits, validity, or accuracy of any of the allegations made against it in the Litigation or
9 of any liability, culpability or wrongdoing by Evans or any of its agents or employees. Nothing in this
10 Settlement shall be construed to be an admission by Evans of any liability or wrongdoing as to each
11 Plaintiff, the Settlement Class or any other person, and Evans has denied and continues to deny each and
12 all of the allegations, claims, and contentions alleged by Plaintiffs in the Action. Evans expressly denied
13 and continues to specifically disclaim any such liability or wrongdoing, including specifically that is has
14 violated any federal, state, or local law. Evans contends that it has complied in good faith with California
15 wage and hour law and dealt fairly and legally with Plaintiffs and the Settlement Class. Nonetheless,
16 Evans has concluded that further proceedings in the Action would be protracted and expensive, and that
17 the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this
18 Agreement in order to dispose of burdensome and protracted litigation. The Parties have entered into this
19 Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience,
20 expenses and risks.

21 18. Nothing in this Agreement, nor any action taken in implementation thereof, nor any
22 statements, discussions, or communications, nor any materials prepared, exchanged, issued or used during
23 the course of the negotiations leading to this Agreement or the Settlement, is intended by the Parties to
24 constitute, nor will any of the for the forgoing constitute, be introduced, be used or be admissible in any
25 way in this Litigation or any other judicial, arbitral, administrative, investigative or other forum or
26 proceeding as evidence of any violation of any state, local law, statute, ordinance, regulation, rule or any
27 obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this
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1 Agreement, directly or indirectly, in this Litigation or any other judicial, arbitral, administrative,
2 investigative or other forum or proceeding, or to any agency, as purported evidence of any violation of
3 any state, local law, statute, ordinance, regulation, rule or any obligation or duty at law or in equity, or for
4 any other purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before
5 the Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement or
6 any orders or judgments of the Court entered in connection with the Settlement.

7 19. None of the documents produced or created by Plaintiffs or the Settlement Class in
8 connection with the claims procedures or claims resolution procedures (including the Notice) constitutes,
9 and is not intended to constitute, an admission by Evans of any violation of any state, local law, statute,
10 ordinance; regulation, rule or any obligation or duty at law or in equity.

11 20. The Parties agree that class certification pursuant to California Code of Civil Procedure
12 section 382 under the terms of this Agreement is for settlement purposes only. Nothing in this Agreement
13 will be construed as an admission or acknowledgement of any kind that any class should be certified or
14 given collective treatment in the Litigation or in any other action or proceeding. Further, this Agreement
15 will not be admissible in any court or other tribunal regarding the propriety of class certification or
16 collective treatment. In the event that this Agreement is not approved by the Court or is terminated, or
17 otherwise fails to be enforceable, Plaintiffs will not be deemed to have waived, limited or affected in any
18 way any claims, rights or remedies in the Litigation, and Evans will not be deemed to have waived, limited,
19 or affected in any way any of its objections or defenses in the Litigation.

20 **TERMS OF SETTLEMENT**

21 21. **Class Certification.** For settlement purposes only, the Parties stipulate that a class may
22 be certified (the “Settlement Class”), as described in Paragraph 13.C of this Agreement. The Parties agree
23 that certification for settlement purposes under the lenient standard applied to settlements is in no way an
24 admission that class certification is proper under the more stringent standard applied for litigation
25 purposes, and that evidence of this limited stipulation for settlement purposes only will not be deemed
26 admissible in this or any other proceeding. It is Evans’s position that if the Litigation were to be litigated,
27 class certification would be inappropriate because, among other things, individual issues predominate.

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1 Furthermore, Evans denies any liability or wrongdoing, and, by entering into this Settlement, does not
2 admit to any violation of law.

3 **22. Settlement Amount.** Evans’s maximum non-reversionary payment of the Gross
4 Settlement Amount under the Settlement is \$750,000, from which payments will be as follows subject to
5 the Court's approval: (1) up to one-third (1/3) or \$250,000 in attorneys' fees to Class Counsel; (2) up to
6 \$15,000 in Class Counsel's reasonable litigation costs; (2) up to \$7,000.00 each as the Enhancement
7 Award payments to Plaintiffs, (3) up to \$12,000.00 in reasonable costs incurred by the Settlement
8 Administrator to administer the Settlement; (4) a payment to the LWDA in the amount of \$56,250.00 and
9 (4) the Net Settlement Payments to Class Members (other than Excluded Class Members). Evans shall
10 pay the Gross Settlement Amount and the additional amount to cover Employer Taxes to the Settlement
11 Administrator no later than 90 calendar days after the Court grants Final Approval.

12 **23. Payment of Net Settlement Payments to Class Members.** After the Net Settlement
13 Amount has been determined, Net Settlement Payments shall be made from the Net Settlement Amount
14 to Class Members (other than Excluded Class Members). The value of each Class Member’s claim shall
15 be based on his or her number of Compensable Workweeks as set forth below.

16 **24. Calculation of Payments to Class Members.** The Settlement Administrator shall have
17 the authority and obligation to calculate the amounts of settlement payments to the Class Members in
18 accordance with the methodology set forth in this Stipulation and any Orders of the Court. Evans will
19 provide the Settlement Administrator with the data and necessary information for the Settlement
20 Administrator to calculate the total number of Compensable Workweeks for each Class Member,
21 including the Class and Subclass. Fifty percent (50%) of the Net Settlement Fund shall be allocated to
22 the Non-Exempt Class. Fifty percent (50%) of the Net Settlement Fund shall be allocated to the Mechanic
23 and Sales Associate Subclass. The Compensable Workweeks for each Class Member, will be added
24 together to determine the total number of “Settlement Value Workweeks” for each Class Member and the
25 total for the Class. After the Net Settlement Amount is determined, the Settlement Administrator will
26 divide the Net Settlement Amount by the total number of Settlement Value Workweeks for all Class
27 Members of each Class and Subclass ("Work Week Rate Amount") and then multiply this amount by each
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1 Class Member's total number of Settlement Value Workweeks to yield that employee's Net Settlement
2 Payment or "Individual Settlement Payment" amount.

3 25. **Settlement Payment Allocation.** The amount paid to each Non-Exempt Class Member
4 who has not opted-out of the Settlement shall be allocated as follows: twenty percent (20%) shall be
5 attributed to wages, and eighty percent (80%) shall be attributed to interest and penalties. The Twenty
6 percent (20%) of the Net Settlement Payments to the Class Members that will be treated as payments in
7 settlement of wage claims will be subject to W-2 reporting. Applicable tax deductions and payroll
8 withholdings for Employee Taxes will be taken from this portion of the Net Settlement Payments. Evans
9 will be responsible to satisfy the Employer Tax obligations relating to the wage portion of the Net
10 Settlement Payments prior to distribution of the settlement payments to the Settlement Class Members.
11 The Settlement Administrator will issue a Form W-2 to each Class Member who has not opted-out of the
12 Settlement reflecting the wage portion of each individual Net Settlement Payment. Eighty percent (80%)
13 of the Net Settlement Payments to Class Members will be treated as payment in settlement of claims for
14 interest and penalties. The Settlement Administrator will report the latter portion of the payments by
15 means of an IRS Form 1099.

16 26. **No Credit Towards Benefit Plans.** Neither the terms of this Settlement nor any of the
17 amounts paid to Plaintiffs or any Class Member shall have any effect on the eligibility or calculation of
18 any employee benefits. The Parties agree that any Individual Settlement Payment amounts paid to Class
19 Members under the terms of this Settlement do not represent any modification of any Class Member's
20 previously credited hours of service or other eligibility criteria, and will not be utilized to calculate any
21 additional benefits, vesting or credit under any employee pension benefit plan, employee welfare benefit
22 plan or other program or policy sponsored by Evans or any of its affiliates, including but not limited to
23 any profit-sharing plans, pension plans, 401(k) plans, bonus plans, stock purchase plans, vacation plans,
24 PTO plans, paid sick leave plans, or any other company sponsored plans or employee benefits. Further,
25 the amounts paid to Class Members shall not be considered wages, compensation or annual earnings for
26 benefits in any year for purposes of determining any rights, eligibility, hours of service, benefit accruals,
27 calculations, contributions or amounts to which any Class Member may be entitled with respect to an such
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1 employee pension benefit plan, employee welfare benefit plan or other program or policy sponsored by
2 Evans or any of its affiliates

3 27. **Settlement Amount Funding and Settlement Payment Due Date.** Evans will deposit the
4 Gross Settlement Amount into a Qualified Settlement Fund (as defined below) established by the
5 Settlement Administrator no later than 90 calendar days after the date of Final Approval.

6 **WAIVER, RELEASE AND DISMISSAL**

7 28. **Release By Class Members.** Upon the date that the Court grants final approval of the
8 Settlement, all Class Members other than Excluded Class Members, hereby do and will be deemed to
9 irrevocably waive, release, acquit and forever discharge Evans (including the Released Parties) of and
10 from any and all claims, demands, rights, liabilities, and causes of action that were or could have been
11 pleaded under local, state or federal law arising out of, relating to, or based on any facts, transactions,
12 events, policies, occurrences, acts, disclosures, statements, omissions, or failures to act pleaded in the
13 operative complaint and PAGA complaint, including but not limited to claims related to unpaid wages
14 and overtime compensation, meal and rest break violations, sick leave violations, untimely final
15 paychecks, inaccurate itemized wage statements, business expenses, unfair business practices, and for
16 penalties and unpaid wages under the Private Attorney General Act.(the "Release"). The Release shall be
17 fully binding on each and every Class Member, other than any Excluded Class Member.

18 The Final Judgment and Order of Dismissal shall dismiss the Litigation with prejudice and shall
19 incorporate the terms of this Paragraph and the Release. The Parties acknowledge that this Settlement,
20 including the releases provided in this Paragraph, reflects a compromise of disputed claims. The Parties
21 further acknowledge that the Release does not release Evans from its obligations as established by this
22 Agreement.

23 Upon approval of this Stipulation at the Final Approval Hearing, the Class Members further
24 covenant not to sue the Released Parties for any and all claims released by each of them.

25 29. **Plaintiffs' Civil Code section 1542 Release.** In addition to the Release made in the
26 Paragraph above, Plaintiffs make the additional following general release ("General Release") of all
27 claims, known or unknown, that Plaintiffs have against Defendant. Plaintiffs, on their behalf and on behalf
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1 of their respective heirs, successors, beneficiaries, assigns, agents, attorneys, representatives and other
2 related persons and entities that may claim by, through or under them, in consideration for the amounts
3 paid to Plaintiffs under this Stipulation, including any enhancement award that may be paid to Plaintiffs,
4 upon the Court's final approval of the Settlement, hereby fully and finally waives, releases, acquits and
5 forever discharges Evans (including the Released Parties) from all known and unknown claims he/she
6 may have against Evans of every nature or description whatsoever arising out of the Litigation, Plaintiffs'
7 employment with Evans, Plaintiffs' separation from employment, and their other dealings with Evans.
8 This General Release of claims includes Covered Claims and claims released in this Stipulation, and any
9 and all known or unknown contract, tort, statutory, common law, constitutional, public policy, and other
10 claims of any type whatsoever, including, without limitation: (i) any and all claims actually alleged or
11 could have been alleged in connection with, or arising directly or indirectly out of or in any way connected
12 with each Plaintiffs' employment with any Released Party; (ii) any and all claims relating to or arising
13 from each Plaintiff's relationship with any Released Party and the termination of that relationship; (iii)
14 any and all claims for wrongful discharge of employment; breach of contract, both express and implied;
15 breach of a covenant of good faith and fair dealing, both express and implied; negligent or intentional
16 interference with contract or prospective economic advantage; and defamation; (iv) any and all claims
17 against the Released Parties for any other tort, contract, common law, constitutional or other statutory
18 claims, including, but not limited to, alleged violations of the California Labor Code or the federal Fair
19 Labor Standards Act (except as prohibited by applicable law), the California Constitution, the California
20 Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, the Americans with
21 Disabilities Act, the California Family Rights Act, the California Business and Professions Code, the
22 Private Attorney General Act, and any and all other federal, state and local laws, statutes, executive orders,
23 regulations, and common law, along with all claims for attorneys' fees, costs and expenses (including any
24 dispute over the non-withholding or other tax treatment of any of the proceeds received by Plaintiffs as a
25 result of this Agreement). Plaintiffs also waive all rights under Section 1542 of the California Civil Code,
26 which section reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE

1 this Agreement. Evans further agrees to consult with the Settlement Administrator prior to the production
2 of the Class List to ensure that the format will be acceptable to the Settlement Administrator.

3 32. Among its other duties as described in this Settlement, the Settlement Administrator shall
4 publish and maintain a settlement website and provide counsel for the Parties with a weekly report
5 showing the number of Opt-Outs and Objections received.

6 33. The Settlement Administrator shall obtain the best possible address for Class Members
7 prior to the mailing.

8 34. Within ten (10) calendar days of receipt of the Class List, the Settlement Administrator will
9 mail the Notice to the Class Members as described below.

10 **NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

11 35. **Notice.** Plaintiffs and Evans, through their respective attorneys, have jointly prepared a
12 Notice, attached hereto as Exhibit 1 to this Agreement and incorporated herein by reference, subject to
13 Court approval, which in substance will be provided to the members of the Settlement Class as follows:

14 36. The Settlement Administrator shall run all the addresses provided by Evans through the
15 United States Postal Service NCOA database (which provides updated addresses for any individual who
16 has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to
17 obtain current address information. In addition, and prior to mailing, the Settlement Administrator shall
18 perform an Accurint (or substantially similar) in-depth skip trace in order to obtain the best possible
19 address for Class Members prior to the mailing.

20 37. The Settlement Administrator shall mail the Notice to the members of the Settlement Class
21 via first-class regular U.S. Mail using the most current mailing address information available, within ten
22 (10) calendar days after receiving the Class List from Evans. The Notice shall provide the members of the
23 Settlement Class sixty (60) days' notice of all applicable dates and deadlines, with this period to begin
24 running on mailing of the Notice by the Settlement Administrator.

25 38. The Notice will include an estimated calculation of the Class Member's estimated
26 Compensable Workweeks and estimated share of the Net Settlement Amount.

27 39. If a Notice is returned from the initial notice mailing as undeliverable with a forwarding
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1 address provided by the United States Postal Service on or by the Response Deadline, the Settlement
2 Administrator will promptly resend the Notice to that forwarding address along with a brief letter stating
3 that the recipient of the Notice has until the original deadline set forth on the Notice, or ten (10) calendar
4 days after the date of re-mailing of the Class Notice (whichever is later) to respond.

5 40. If a Notice is returned as undeliverable without a forwarding address from its first mailing,
6 the Settlement Administrator shall undertake reasonable efforts to locate a current address, including
7 performing an Experian (or substantially similar) in-depth skip trace or mass search on LexisNexis
8 databases based on set criteria. If the Settlement Administrator obtains a more current address, the
9 Settlement Administrator shall resend the Notice to that address along with a brief letter stating that the
10 recipient of the Notice has until the original deadline set forth on the Class Notice or ten (10) calendar
11 days after the date of re-mailing of the Notice (whichever is later) to respond.

12 41. If any Notice is returned from any mailing and/or re-mailed, the Settlement Administrator
13 will note for its own records and notify the Parties' Counsel of the date of such re-mailings as part of a
14 weekly status report provided to the Parties.

15 42. No later than twenty-five (25) days prior to the Final Approval Hearing, the Settlement
16 Administrator shall provide counsel for Evans and Class Counsel with a declaration attesting to the
17 completion of the Notice process, including the number of attempts to obtain valid mailing addresses for
18 and re-sending of any returned Notices, as well as the number of valid Opt-Outs, Objections and
19 deficiencies which the Settlement Administrator received.

20 43. **Objections.** A Class Member who wishes to object to the Settlement must notify the
21 Settlement Administrator of his or her objection, in writing, on or prior to the Response Deadline. The
22 Settlement Administrator shall provide all objections as received to Class Counsel and Defendant's
23 Counsel, as well as file all such objections with the Court. Excluded Class Members are not permitted to
24 object to the Settlement. The Objection must (i) clearly identify the case name and number (*Sanchez, et.*
25 *al. v. Evans Tire and Service Centers, Inc.*, Case No. Case No. 37-2018-00063516-CU-OE-CTL); (ii) set
26 forth in writing the grounds for the objection; (iii) include the address and phone number of the Class
27 Member or counsel for the Class Member; (iv) be signed by the Class Member or counsel; and (v) be
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1 submitted to the Settlement Administrator, along with all supporting papers. The Class Member may
2 appear personally or through an attorney, at his or her own expense, at the Final Approval hearing.
3 However, it is not necessary for the Class Member or his or her attorney to appear at the Final Approval
4 Hearing in order for the objection to be considered by the Court. Any attorney who represents a Class
5 Member objecting to this Settlement must file a notice of appearance with the Court on or prior to the
6 Response Deadline and serve Class Counsel and Defense Counsel. Plaintiffs and Evans will be permitted
7 to respond in writing to any such Objections no later than seven (7) calendar days before the Final
8 Approval hearing.

9 44. If a Class Member objects to this Settlement, the Class Member will remain a member of
10 the Settlement Class and if the Court approves the Settlement, the Class Member will be bound by the
11 terms of the Settlement and Final Judgment in the same way and to the same extent as a Settlement Class
12 Member who does not object. The Court retains final authority with respect to the consideration and
13 admissibility of any Objections. Provided that the Settlement Administrator mailed the Notice to a member
14 of the Settlement Class, this deadline to file an Objection shall apply notwithstanding any assertion by any
15 member of the Settlement Class of non-receipt of the Notice.

16 45. Class Members who do not file and timely serve written Objections in accordance with the
17 procedures set forth in this Agreement have waived all objections to the Settlement and are forever
18 foreclosed from making any objection to the Settlement or any aspect of the Settlement, whether by appeal
19 or otherwise. Plaintiffs waive any right to object to the Settlement, and hereby endorse the Settlement as
20 fair, reasonable and adequate and in the best interests of the Settlement Class. At no time will any of the
21 Parties or their counsel seek to solicit or otherwise encourage any Class Member to submit written
22 objections to the Settlement or to file any appeal from the Final Approval Order.

23 46. **Claim Disputes.** If the member of the Settlement Class does not dispute the number of
24 eligible Compensable Workweeks set forth in the Notice, such person need not take further action to
25 participate in the Settlement. If the member of the Settlement Class disputes the number of eligible
26 Compensable Workweeks set forth in the Notice, or asserts that they should have been included as a
27 member of the Settlement Class, such person must follow the directions in the Notice (copy of which is
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1 attached hereto), including preparing a statement setting forth the number of eligible Compensable
2 Workweeks that such person believes in good faith is correct and stating that the member of the Settlement
3 Class authorizes the Settlement Administrator to review the Settlement Class member's personnel file to
4 determine such information and attaching any relevant documentation in support thereof. The member of
5 the Settlement Class must mail the signed and completed statement no later than sixty (60) calendar days
6 after the date of the mailing of the Notice (or extension thereof pursuant to Paragraph 13.T, or the number
7 of eligible Compensable Workweeks set forth in the Notice will govern the Net Settlement Payments to
8 the members of the Settlement Class).

9 47. Upon timely receipt of any such challenge, the Settlement Administrator, in consultation
10 with Class Counsel and counsel for Evans, will review the pertinent payroll records showing the dates the
11 Settlement Class member was employed and the pertinent leave(s) taken, which records Evans agrees to
12 make available to the Settlement Administrator. After consulting with Class Counsel and counsel for
13 Defendant, the Settlement Administrator shall compute the number of eligible Compensable Workweeks
14 to be used in computing the Settlement Class member's pro rata share of the Net Settlement Amount. In
15 the event there is a disparity between the dates a Settlement Class member claims he or she worked during
16 the Settlement Period and the dates indicated by Evans's records, Evans's records will control unless
17 inconsistent with paycheck stub(s) (or bona fide copies thereof) provided by the Settlement Class member,
18 in which case the paycheck stub(s) will control. The Settlement Administrator's decision as to the total
19 number of eligible Compensable Workweeks shall be final and non-appealable. The Settlement
20 Administrator shall send written notice of the decision on any such claim to the Settlement Class member,
21 to Class Counsel, and counsel for Evans within ten (10) calendar days of resolution of the dispute.

22 48. **Opportunity to be Excluded.** In order for any Settlement Class member to validly
23 exclude himself or herself from the Settlement Class and this Settlement (i.e., to validly "Opt-Out"), a
24 written Request for Exclusion must: (i) clearly identify the case name and number (*Sanchez, et. al. v.*
25 *Evans Tire and Service Centers, Inc.*, Case No. Case No. 37-2018-00063516-CU-OE-CTL); (ii) set forth
26 in writing "I wish to exclude myself from the settlement, I understand I will not receive payment"; (iii)
27 include the address and phone number of the Class Member or counsel for the Class Member; (iv) be
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1 signed by the Class Member or counsel; and (v) be submitted to the Settlement Administrator, postmarked
2 by no later than the Response Deadline. The Notice (a copy of which is attached hereto as Exhibit “1”) shall
3 shall contain instructions on how to Opt-Out, including the requirements to submit a valid Request for
4 Exclusion as described in Paragraph 13.J above. The date of the initial mailing of the Notice, and the date
5 the signed Request for Exclusion was postmarked, shall be conclusively determined according to the
6 records of the Settlement Administrator. Any Settlement Class member who timely and validly requests
7 exclusion from the Settlement Class and this Settlement will not be entitled to any individual settlement
8 payment, will not be bound by the terms and conditions of this Settlement, and will not have any right to
9 object, appeal, or comment thereon. Any member of the Settlement Class who does not timely file and
10 mail notice of his or her request to be excluded from the Settlement Class will be deemed included in the
11 Settlement Class in accordance with this Settlement. Plaintiffs waive any right to be excluded from the
12 Settlement Class. Within ten (10) calendar days of the expiration of the Response Deadline the Settlement
13 Administrator will inform counsel for the Parties via email, of the number of valid Requests for Exclusions
14 it received.

15 49. Neither Party will encourage any Class Member to opt out of or object to this Settlement.
16 If a Settlement Class Member contacts Class Counsel, Class Counsel may discuss the terms of the
17 Settlement and the Settlement Class Member's options, as stated herein.

18 50. **Qualified Settlement Fund.** The Gross Settlement Amount paid by Evans shall be
19 deposited into an account established by the Settlement Administrator as a “Qualified Settlement Fund”
20 within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg.
21 Section 1.468B-1, *et seq.*, (the “Settlement Fund”) and shall be administered by the Settlement
22 Administrator pursuant to the final terms of the Settlement as approved by the Court. The Administrator
23 shall request and obtain from the IRS an appropriate Tax ID for the Settlement Fund. The Administrator
24 shall serve as a Trustee of the Settlement Fund and shall act as a fiduciary with respect to the handling,
25 management and distribution of the Settlement Fund, including the handling of all tax-related issues,
26 reporting and payments. The Administrator shall act in a manner necessary to qualify and maintain the
27 Settlement Fund as a Qualified Settlement Fund and the Parties shall cooperate to ensure such treatment
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1 and shall not take a position in any filing or before any tax authority inconsistent with such treatment.

2 51. After the Settlement Effective Date, the Settlement Administrator shall cause the
3 Individual Settlement Payments, Court approved Enhancement Award to Plaintiffs, and Court approved
4 attorneys' fees and costs to be paid as provided in this Agreement as approved by the Court. If a check is
5 returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly
6 attempt to obtain a valid mailing address by performing a skip trace search and, if another address is
7 identified, shall mail the check to the newly identified address. If any settlement check is uncashed after
8 180 days it will become void and the Settlement Administrator will place a stop-payment on the check.
9 On the back of each check the Settlement Administrator will include a pre-printed notice informing the
10 Class Member that he or she has 180 days to cash the check or it will become void. The Settlement
11 Administrator will also recalculate and correct any Employee Taxes withheld or Employer Taxes paid to
12 adjust for the uncashed check. The residue, if any, including (1) funds from checks which were unable to
13 be delivered due to the Settlement Administrator's inability to obtain a valid mailing address as set forth
14 in this provision, (2) funds from checks that remain uncashed after 180 days from the date of the check,
15 and (3) any related tax refunds or returns, will be delivered to the California Uncashed Check Fund in the
16 name of the Settlement Class member.

17 **ATTORNEYS' FEES AND COSTS**

18 52. Plaintiffs request, and Evans shall not oppose, an application by Class Counsel to the Court
19 seeking an award of attorneys' fees not to exceed \$250,000 of the Gross Settlement Amount, which
20 represents one-third (1/3) of the Gross Settlement Amount, to compensate Class Counsel for all past and
21 future attorneys' fees necessary to prosecute, settle and administer the Litigation and this Settlement,
22 including for the work performed and all work remaining to be performed in documenting the Settlement,
23 securing the Court's approval of the Settlement, administering the Settlement, ensuring that the Settlement
24 is fairly administered and implemented, and obtaining judgment, to be paid out of the Gross Settlement
25 Amount and not from any additional payment by Evans.

26 53. Additionally, Plaintiffs request, and Evans shall not oppose, an application by Class
27 Counsel to the Court seeking payment to Class Counsel of their reasonable litigation costs, in an amount
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1 not to exceed \$15,000.00, which represents all past and future attorneys' costs and expenses necessary to
2 prosecute, settle and administer the Litigation and implementing the terms of this Settlement incurred by
3 Class Counsel, to be paid out of the Gross Settlement Amount and not from any additional payment by
4 Evans.

5 54. Any attorneys' fees or costs awarded to Class Counsel by the Court shall be deducted from
6 the Gross Settlement Amount for the purpose of determining the Net Settlement Amount. The Parties
7 further agree that this Settlement is not conditioned on the Court awarding the full amount of attorneys'
8 fees and costs requested by Class Counsel and if the Court should approve a lesser percentage or amount
9 of fees and/or costs than the amount that Class Counsel ultimately seeks, then the unapproved portion or
10 portions shall become part of the Net Settlement Amount and shall be distributed to Class Members on a
11 pro rata basis based on the total number of Compensable Workweeks. The Settlement Administrator will
12 issue an IRS Form 1099 to Class Counsel with respect to the fees and costs awarded to Class Counsel.

13 **ENHANCEMENT AWARD TO PLAINTIFFS**

14 55. Evans shall not oppose an application by Plaintiffs to the Court, and Plaintiffs shall not
15 seek or receive an amount in excess of \$14,000.00 collectively, to be paid out of the Gross Settlement
16 Amount, as an enhancement for their service as Class Representative and for their participation in and
17 assistance with the Litigation (the "Enhancement Award"), subject to approval by the Court and
18 conditioned on Plaintiffs' execution of the General Release as set forth in Paragraph 29 above, by Plaintiffs
19 signing this Stipulation, in addition to any payment he or she may otherwise receive as a Class Member.
20 Any enhancement awarded to Plaintiffs by the Court shall be deducted from the Gross Settlement Amount
21 for the purpose of determining the Net Settlement Amount. Plaintiffs understand and agree that this
22 Settlement is not conditioned on the Court awarding the full amount of the Enhancement Award requested
23 by Plaintiffs. The Settlement Administrator will issue an IRS Form 1099 to Plaintiffs for their
24 enhancement payment, and Plaintiffs will be fully responsible for correctly characterizing this
25 compensation for tax purposes and for paying any taxes owing on said amount.

26 **PAGA CIVIL PENALTIES**

27 56. Evans shall pay a total amount of Seventy-Five Thousand Dollars and Zero Cents
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1 (\$75,000.00) from the Gross Settlement Amount in settlement of all claims for civil penalties asserted
2 under the PAGA, as described in the Released Claims. Within ninety (90) calendar days of the Final
3 Judgment, the Settlement Administrator shall send an amount totaling 75% of the PAGA settlement
4 amount (i.e., Fifty-Six Thousand, Two Hundred and Fifty Dollars and Zero Cents (\$56,250) to the LWDA.
5 The remaining 25% of the PAGA Payment Eighteen Thousand Seven Hundred Fifty Dollars and Zero
6 Cents (\$18,750) shall be included in the Net Settlement Amount and distributed to the Settlement Class
7 Members who worked for Evans between February 16, 2018 and October 18, 2018.

8 **TAX RESPONSIBILITY**

9 57. Neither Evans nor Class Counsel are making any representations as to the tax treatment or
10 legal effect of the payments called for under this Settlement, and Plaintiffs and the Class Members are not
11 relying on any statement or representation by Class Counsel or Evans in this regard. Additionally,
12 notwithstanding any prior agreement, practice or policy of Evans or any Released Party to the contrary,
13 Plaintiffs and each Class Member shall be solely and fully responsible for any and all taxes under all
14 federal, state and local tax laws with respect to the Individual Settlement Payment to be made to each
15 Class Member, except for the Employee Taxes withheld by the Settlement Administrator and the
16 Employer Taxes to be paid by the Settlement Administrator.

17 **COURT APPROVAL**

18 58. This Agreement and the Settlement is contingent upon the Court granting Final Approval
19 of the Settlement and entering Final Judgment. Plaintiffs and Evans agree to take all steps as may be
20 reasonably necessary to secure both Preliminary Approval and Final Approval of the Settlement by the
21 Court, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse
22 to each other in obtaining the Court's Final Approval of the Settlement in all respects. Plaintiffs and Evans
23 expressly agree that they will not file any objection (as opposed to request for correction) to the terms of
24 this Stipulation of Settlement or assist or encourage any person or entity to file any such objection.

25 59. Promptly upon the execution of this Stipulation, Plaintiffs shall file a motion for
26 Preliminary Approval of the Settlement (which Evans shall not oppose), subject to final review and
27 approval by Evans prior to filing. Specifically, Plaintiffs will apply to the Court for the entry of an Order:
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- (a) That the proposed Settlement should be preliminary approved as fair, reasonable and adequate as to the Class;
- (b) Approving as to form and content the proposed Notice to the Class;
- (c) Directing the mailing of the Notice by first-class mail as to the Class Members;
- (d) Preliminarily certify the Class for purposes of Settlement only;
- (e) Approving Class Counsel, Class Representatives, and the Settlement Administrator; and
- (f) Setting a Final Approval Hearing date with sufficient time to allow the Parties and the Settlement Administrator to complete the Notice process, calculate the settlement payments and tax and reporting obligations, and prepare and file the Motion for Final Approval.

60. After completion of the Notice process, Class Counsel shall be responsible for preparing and filing the Motion for Final Approval with the Court in sufficient time prior to the Final Approval Hearing date, including all necessary supporting Declarations, [Proposed] Orders and Judgment, motions for attorneys’ fees and costs, and the Enhancement Award, but all subject to final review and approval by Evans prior to filing with the Court.

61. Counsel for the Parties shall have the right, subject to approval by the Court as to the new date, to continue or reschedule the original scheduled Final Approval Hearing date without providing any notice to the Class Members of the new date for the hearing, except for any Class Members who have timely submitted any Objections to the Settlement.

MISCELLANEOUS PROVISIONS

62. This Agreement constitutes the entire agreement between Plaintiffs and Evans and shall supersede and replace the Memorandum of Understanding previously signed by the Parties. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The

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1 Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural
2 and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or
3 relating to the Agreement, or the subject matter hereof, will be resolve solely and exclusively in the
4 Superior Court of the State of California for the County of San Diego, and Plaintiffs and Evans hereby
5 consent to the personal jurisdiction of the Court over them solely in connection therewith. Plaintiffs, on
6 their own behalf and on behalf of the Settlement Class, and Evans participated in the negotiation and
7 drafting of this Agreement. As such, neither Plaintiffs nor Evans may claim that any ambiguity in this
8 Agreement should be construed against the other.

9 63. The terms and conditions of this Agreement constitute the exclusive and final
10 understanding and expression of all agreements between Plaintiffs and Evans with respect to the
11 Settlement of the Litigation. The Agreement may be modified only by a writing signed by the original
12 signatories and approved by the Court.

13 64. Plaintiffs, Evans and their respective attorneys shall proceed diligently to prepare and
14 execute all documents, to seek the necessary Court approvals, and to do all things reasonably necessary
15 or convenient to consummate the Agreement as expeditiously as possible.

16 65. The Agreement may be executed in one or more actual or non-original counterparts, all of
17 which will be considered one and the same instrument and all of which will be considered duplicate
18 originals.

19 66. Each individual signing below warrants that he or she has the authority to execute this
20 Agreement on behalf of the party for whom or which that individual signs.

21 67. Plaintiffs, members of the Settlement Class, Class Counsel and Evans are direct
22 beneficiaries of this Agreement, but there are no third party beneficiaries.

23 68. To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or
24 legal holiday, that deadline shall be continued until the following business day.

25 69. In the event that any one or more of the provisions contained in this Agreement shall for
26 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
27 unenforceability shall in no way effect any other provision if Evans and Class Counsel, on behalf of the
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1 parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or
2 unenforceable provision had never been included in this Agreement.

3 70. If the Court does not grant final approval of this Settlement, or if any part of the Court’s
4 final approval of this Settlement is reversed, then this Settlement will become null and void. In such case,
5 the Settlement shall not be used or be admissible in any subsequent proceedings in any Court or forum.

6 71. The Parties represent, covenant, and warrant that they have not directly or indirectly
7 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity
8 any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this
9 Settlement.

10 72. Nothing contained in this Settlement shall be construed or deemed an admission of liability,
11 culpability, negligence, or wrongdoing on the part of Evans. Each of the Parties has entered into this
12 Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and
13 expense. This Settlement shall be inadmissible in evidence in any proceeding, except an action or
14 proceeding to approve, interpret, or enforce its terms. In connection with any such proceeding to approve,
15 interpret or enforce the Settlement, the Parties agree that this Settlement shall be binding and enforceable
16 between them, and admissible in a Court of law, including for purposes of California Evidence Code
17 section 1123.

18 73. In the event that one or more of the Parties institutes any legal action, or other proceeding
19 against any other Party or Parties to enforce the provisions of this Settlement, or to declare rights or
20 obligations under this Settlement, the successful Party or Parties shall be entitled to recover from the
21 unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any
22 enforcement actions.

23 74. This Settlement shall be binding upon and inure to the benefit of the Parties and their
24 respective heirs, trustees, executors, administrators, successors, and assigns.

25 75. Neither Class Counsel nor defense counsel intend anything contained in this Stipulation
26 for Settlement to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall
27 it be relied upon as such.

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SAN DIEGO, CALIFORNIA 92103

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1 76. **Mutual Agreement to Cooperate.** The Parties acknowledge that it is their intent to
2 consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate
3 and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish
4 the foregoing terms and conditions of this Agreement. The Parties agree that they will not solicit, facilitate,
5 or assist in any way, requests for exclusions or objections by putative or actual Class Members.

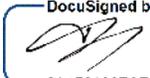
6 77. **Waiver of Right to Appeal.** Evans, Plaintiffs and those Class Members who did not timely
7 file and serve an objection to the Settlement, hereby waive any and all rights to appeal from the Final
8 Order approving the settlement, including all rights to any post-judgment proceeding and appellate
9 proceeding, such as motion to vacate or set-aside judgment, a motion for new trial, and any extraordinary
10 writ, and the Final Order approving the settlement therefore will become final and non-appealable at the
11 time it is entered. This waiver does not include any waiver of the right to oppose any appeal, appellate
12 proceedings, or post-judgment proceedings.

13 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates
14 indicated below.

15
16 Dated: March 10, 2020

17
18 By: _____
19 Marco Sanchez

20 Dated: March 10, 2020

21 DocuSigned by:
22 By:  _____
23 Carlos Veal
24 2A1F2122FCEE431...

25 Dated: March 10, 2020

26 By: _____
27 John Andonian
28 CEO of EVANS TIRE AND SERVICE CENTERS,
INC

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17
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19 B*182F0E485BE487...

20 Dated: March 10, 2020

21
22 By: _____
23 Carlos Veal

24 Dated: March 10, 2020

25
26 By: _____
27 John Andonian
28 CEO of EVANS TIRE AND SERVICE CENTERS,
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13 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates
14 indicated below.

15
16 Dated: March 9, 2020

17
18 By: _____
19 Marco Sanchez

20 Dated: March 9, 2020

21
22 By: _____
23 Carlos Veal

24 Dated: March 9, 2020

25
26 By:  _____
27 John Andonian
28 CEO of EVANS TIRE AND SERVICE CENTERS,
INC

1 Dated: March 10, 2020

GRAHAMHOLLIS APC

2

3

By: 

4

GRAHAM S.P. HOLLIS

VILMARIE CORDERO

HALI M. ANDERSON

Attorneys for Plaintiffs Marco Sanchez and Carlos Veal

5

6

7 Dated: March 10, 2020

Law Offices of Vatche Chorbajian

8

9

By: 

10

VATCHE CHORBAJIAN

Attorneys for Defendant Evans Tire and Service Centers, Inc.

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