

Nazo Koulloukian, SBN 263809

nazo@koullaw.com

Hilary Silvia

hilary@koullaw.com

KOUL LAW FIRM

3435 Wilshire Blvd., Suite 1710

Los Angeles, CA 90010

Telephone: (213) 761-5484

Facsimile: (818) 651-3938

Attorneys for Plaintiff,
COURTNEY DEAN,
and all putative class members and aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

COURTNEY DEAN, an individual, on behalf
of herself and all others similarly situated,

Plaintiffs,

vs.

ELI'S AUTO CENTER II, INC., *a California
Corporation*; ELI'S COLLISION REPAIR OF
WEST LOS ANGELES, INC., *a California
Corporation*; ELI'S COLLISION REPAIR I,
INC. *a California Corporation*; ELI'S
COLLISION REPAIR OF SOUTH BAY,
INC., *a California Corporation*; DANIEL
SHAMAM, *an individual*; and DOES 1
through 100, inclusive,

Defendants.

Case No.:

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

- 1. Failure to Pay Wages**
- 2. Failure to Timely Provide and/or
Authorize Meal Breaks**
- 3. Failure to Provide and/or Authorize
Rest Breaks**
- 4. Failure to Reimburse Required
Business Expenses**
- 5. Failure to Pay Earned Wages Upon
Discharge, Waiting Time Penalties**
- 6. Failure to Provide Timely, Accurate,
Itemized Wage Statements**
- 7. Unlawful Business Practices
Bus & Prof. Code §17200**
- 8. Private Attorneys General Act
Penalties (Lab. Code §2699)**

JURY TRIAL DEMANDED

Plaintiff COURTNEY DEAN, individually, and on behalf of all others similarly situated,
all aggrieved employees, and as a Private Attorney General for the State of California
(collectively "Plaintiff"), alleges as follows:

NATURE OF THE ACTION

1. This is an employment class and representative action on behalf of over 50 hourly, non-exempt employees against their employers for violations of numerous wage and hour laws. Plaintiff brings this employment class action complaint on behalf of herself, and all others similarly situated, all aggrieved employees, and as a Private Attorney General for the State of California, against Defendants ELI'S AUTO CENTER II, INC., ELI'S COLLISION REPAIR OF WEST LOS ANGELES, INC., ELI'S COLLISION REPAIR I, INC., and ELI'S COLLISION REPAIR OF SOUTH BAY, INC. (collectively hereinafter referred to as "ELI'S" or "Defendants"), and the other Defendants DOES 1-50, inclusive, (hereafter collectively "Defendant" or "Defendants"). In this Complaint, Plaintiff alleges that Defendants failed to (1) pay all wages owed for all hours worked, including overtime wages; (2) timely provide and/or authorize meal breaks; (3) timely provide and/or authorize rest breaks; (4) reimburse for required expenses; (5) pay earned wages upon discharge incurring waiting time penalties; (6) provide timely, accurate wage statements; (7) unlawful and unfair business practices; and (8) penalties under the Private Attorneys General Act ("PAGA"), Labor Code §2698 et seq. Attorney General Act ("PAGA"), Labor Code §2698 et seq.

2. The class claims in this action are brought pursuant to Code of Civil Procedure ("CCP") § 382, seeking recovery for unpaid wages, including overtime wages and reimbursements, missed meal and rest period penalty pay, statutory and waiting time penalties, injunctive and other equitable relief, interest, and reasonable attorneys' fees and costs. Pursuant to both the class action and representative action procedures provided for under California law, Plaintiff, on behalf of herself and proposed Class members and aggrieved employees (also referred to as "Class"), also seeks injunctive relief and restitution of all benefits Defendants have received from their unlawful actions as alleged herein.

3. Plaintiff has provided notice of these claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency ("LWDA") and now brings this First Amended Complaint, including claims for civil penalties under the Private Attorneys General Act ("PAGA"), Labor Code §2698 *et seq.* Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*

4. The “Class Period” is designated as the four-year period prior to the filing of this Complaint through the date of final disposition of this action. From the start of the Class Period through the present, Defendants have had a policy and/or practice of ignoring and violating California wage and hour laws, and workplace safety laws, in their business as more fully set forth below.

5. The “PAGA Period” is defined herein commences one year prior to the date of filing the PAGA Notice letter with the LWDA.

6. Defendants have treated all persons employed in California in such a way as to violate California's laws governing conditions of employment and payment of wages owed. Plaintiff asserts that Defendants have knowingly and with conscious disregard of the law refused to pay the Class members and aggrieved employees and aggrieved employees all wages owed, including overtime wages and meal, rest break, and reporting time penalty wages. Defendants have violated numerous Labor Code provisions, as set forth herein. Class members and aggrieved employees and aggrieved employees are owed their back pay, plus interest and/or premiums and penalties under Business and Professions Code section 17203 to compensate Class members and aggrieved employees and aggrieved employees for the delay in receiving wages due.

7. Defendants, by and through their actions, have engaged in unfair competition, requiring restitution to persons affected and disgorgement of profits so obtained.

THE PARTIES

8. Plaintiff COURTNEY DEAN is an individual who resides in California and was employed by Defendants until April of 2019.

9. Defendants ELI’S AUTO CENTER II, INC., ELI’S COLLISION REPAIR OF WEST LOS ANGELES, INC., ELI’S COLLISION REPAIR I, INC., and ELI’S COLLISION REPAIR OF SOUTH BAY, INC. (collectively hereinafter referred to as “ELI’S”), are all related entities under common ownership. They are all California corporations qualified to do business in California, with the capacity to sue and to be sued, and doing business, in the County of Los Angeles, State of California.

10. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiff. When their true names and capacities are ascertained, Plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is informed and believe, and thereon alleges, that each of the fictitiously-named Defendants is responsible in some manner for the occurrences herein alleged, and that the damages sustained by Plaintiff and the Class members and aggrieved employees and aggrieved employees herein alleged were proximately caused by such Doe Defendants.

11. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff, aggrieved employees, and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

12. Venue is proper in this judicial district because Defendants conduct business in this County and Defendants have legal obligations to Plaintiff and many of the Class members and aggrieved employees and aggrieved employees in this case that arose in this county.

13. The monetary damages, restitution and statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

14. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California and Defendants are incorporated in and/or qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

///

CLASS AND REPRESENTATIVE ACTION ALLEGATIONS

15. During the Class and PAGA Period, Defendants committed various violations of the California Labor Code, the CCR, the UCL and IWC Wage Order 9, as alleged below in more detail. Defendants enforce multiple policies that violate state law which are intended to increase its own profits to the detriment of its employees.

16. Defendants employed, upon information and belief, more than 50 current and former non-exempt employees (hereafter “Class members and aggrieved employees” or collectively “the Class”) during the Class Period.

17. Upon information and belief, all putative Class members and aggrieved employees and aggrieved employees are non-exempt and paid on an hourly basis – not on a salary basis.

18. Defendants failed to (1) pay all wages owed for all hours worked, including overtime wages; (2) timely provide and/or authorize meal breaks; (3) timely provide and/or authorize rest breaks; (4) reimburse for required expenses; (5) pay earned wages upon discharge incurring waiting time penalties; (6) provide timely, accurate wage statements; and (7) unlawful and unfair business practices. These policies and practices have deprived Plaintiff and Class members and aggrieved employees of payment for all hours worked, and further damages, as set forth below.

19. Unpaid Hours Worked, Including Overtime Hours Worked. Section 2(H) of Wage Order 9 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” Defendant has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below.

A. Post-Shift Work and Off-the-Clock Communications. Plaintiff and the Class frequently worked off the clock and were routinely subjected to periods wherein they were under the Defendants’ control but not compensated for their time. Plaintiff estimates that she worked 5-6 unpaid, off-the-clock hours per week. Frequently, after clocking out, Plaintiff would receive calls from adjusters or estimators and Plaintiff was required to respond immediately. She

1 also received numerous text messages and calls on her personal cell phone
2 daily while off the clock, some calls as late as 11 pm. Plaintiff and the Class
3 were required to take the calls from their employer, and respond to text
4 messages on their personal time. The calls and messages were about matters
5 related to work. Plaintiff and the Class were not paid for time spent
6 communicating with their employer while off the clock. Plaintiff and the Class
7 were also required to work through their meal periods but would have time
8 automatically deducted from their timecards. Further, when they did get meal
9 breaks, they were required to keep their walkie-talkie's on so that time was
10 not free of all duties and instead counts as hours worked. This resulted in
11 many unpaid hours worked for all the Class required to communicate
12 regarding work matters with their employer while off the clock.

13 B. Failure to Pay Wages- Required Minimum Wage. Defendants failed to pay
14 Plaintiff and the Class for all hours worked as a result of the practice
15 described herein. Because Plaintiff and the Class were paid at or near
16 minimum wage, Defendants' failure to pay for all hours worked, including
17 overtime, resulted in a payment of less than the minimum wage for all hours
18 worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 9-
19 2001.

20 C. Failure to Pay All Wages Owed Twice Per Month. Defendant was required to
21 pay Plaintiff and Class members and aggrieved employees all wages earned
22 twice during each calendar month pursuant to Labor Code §204(a). Defendant
23 failed to pay all wages earned to employees as a result of the unlawful
24 employment policies and practices discussed herein. As a result of these
25 practices, Employees were underpaid for hours worked, including overtime
26 and penalty wages, and this underpayment resulted in a failure to pay all
27 wages owed twice per month. Due to this failure, Defendant is liable under
28 Labor Code §210 for failure to pay wages as required by law.

1 20. First and second meal periods. During the class period, Defendant failed to maintain a
2 compliant meal period policy and practice. Defendant failed to provide all its hourly employees
3 with their right to take all required timely, off-duty, unpaid 30-minute meal periods. Labor Code
4 §512 provides, “[a]n employer may not employ an employee for a work period of more than five
5 hours per day without providing the employee with a meal period of not less than 30
6 minutes...An employer shall not employ an employee for a work period of more than 10 hours
7 per day without providing the employee with a second meal period of not less than 30 minutes.”
8 Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any
9 meal... period mandated by an applicable order of the Industrial Welfare Commission.” Wage
10 Order 9 provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30
11 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as
12 time worked.” Labor Code §1198 makes it unlawful for an employer to employ an employee for
13 longer hours than those fixed by the wage order or under conditions of labor prohibited by the
14 order.

15 21. On many occasions, Plaintiff was unable to take a meal period, and she was never
16 provided a second meal period for shifts over 10 hours. Plaintiff and the Class were required to
17 keep their walkie talkies with them during meal periods and respond to them when called, so
18 they were never free of all duties. Frequently, Plaintiff was unable to take a meal break at all.
19 However, regardless of whether she took a break, meal breaks were automatically deducted from
20 her hours worked. Plaintiff states that she missed a meal break 3-4 times per week and that she
21 observed her co-workers experiencing the same missed meal breaks. She further explains that if
22 she stepped out for lunch, Defendants would call her to come back in. She found it impossible to
23 be relieved of all duties for a compliant meal period. She was never paid meal period penalty
24 wages for these missed and noncompliant meal periods.

25 22. Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of
26 “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code
27 §§226.7, 512, and 1198. As a derivative claim, Plaintiff alleges that pay statements were
28

1 inaccurate, failing to include required meal period penalties, thus failing the requirements of
2 Labor Code §226(a).

3 23. Rest periods. Defendant has failed to maintain a policy and practice that provides or
4 permits its employees to take off-duty rest periods as required by Cal. Lab. Code §226.7, §512
5 and Wage Order 9. Plaintiff and Class members and aggrieved employees were unable to take
6 compliant rest periods. Plaintiff states that her rest breaks were constantly interrupted and, as a
7 result, she and the Class were unable to take compliant rest periods. She was required to keep her
8 walkie talkie with her at break and lunch and respond when called, so she was never free of all
9 duties. In addition, she frequently received calls during breaks that she was required to take. If a
10 customer came in and asked for her while she was on break, she was required to meet with that
11 customer immediately. Plaintiff states that she and her coworkers complained numerous times
12 about their inability to take a compliant rest break, but no changes were ever made. Defendant
13 failed to pay Plaintiff and similarly situated employees all premium compensation (one hour of
14 pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor
15 Code §226.7 (b) for these missed rest periods. As a derivative claim, Plaintiff alleges that pay
16 statements were inaccurate, failing to include required rest period penalties, thus failing the
17 requirements of Labor Code §226(a) and §1198.

18 24. Failure to reimburse for required business expenses. Plaintiff and Class members and
19 aggrieved employees were required to utilize their personal cell phones for work purposes.
20 However, Plaintiff and Class members and aggrieved employees were not reimbursed for the
21 cost of this required business expense. Labor Code §2802 requires employers to indemnify
22 employees for necessary expenditures or losses incurred by employees in direct consequence of
23 discharge of duties. Here, Defendant required Plaintiffs and employees to utilize their personal
24 cell phones for work purposes, but failed to reimburse Plaintiffs and employees for this use as
25 required by the Labor Code.

26 25. Failure to timely pay all wages owed. Defendant failed to timely pay all wages owed
27 by failing to pay all wages due upon separation as well as failing to pay all wages owed twice per
28 month.

1 A. Failure to pay wages due upon separation. Defendants knowingly and
2 willfully failed to pay all compensation due and owing, including payment for
3 all hours worked, overtime, and penalty pay, to Plaintiff at the time
4 employment terminated. In addition, Defendants willfully failed to pay Class
5 members and aggrieved employees who are no longer employed by it all
6 compensation due upon termination of employment as required by Cal. Lab.
7 Code §§201 and 202. Pursuant to §§203, Plaintiff and similarly situated
8 individuals are now also entitled to recover up to thirty (30) days of wages due
9 to Defendants' "willful" failure to comply with the statutory requirements of
10 §§201 and 202 of the Labor Code. Plaintiff believes that other employees who
11 separated from the company, whether voluntary or involuntary, were also
12 denied payment of wages in a timely manner as required by §203.

13 B. Failure to pay all wages owed twice per month. Defendant was required to pay
14 Plaintiff and Class members and aggrieved employees all wages earned twice
15 during each calendar month pursuant to Labor Code §204(a). Defendant failed
16 to pay all wages earned to employees as a result of the unlawful employment
17 policies and practices discussed herein. As a result of these practices,
18 Employees were underpaid for hours worked, including overtime and penalty
19 wages, and this underpayment resulted in a failure to pay all wages owed
20 twice per month resulting in liability under Labor Code §210 for violation of
21 §204.

22 26. Wage statement violations. California Labor Code § 226(a) provides that "[e]very
23 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
24 employees...an accurate itemized statement in writing showing (1) gross wages earned, (2) total
25 hours worked..., (3) the number of piece-rate units earned and any applicable piece rate if the
26 employee is paid on a piece-rate basis, (4) all deductions ... , (5) net wages earned, (6) the
27 inclusive dates of period for which the employee is paid, (7) the name of the employee and his or
28 her social security number..., (8) the name and address of the legal entity that is the employer,

1 and (9) all applicable hourly rates in effect during the pay period and the corresponding number
2 of hours worked at each hourly rate by the employee.”

3 27. Labor Code § 1174 provides that “[e]very employer employing labor in this state
4 shall ... (c) [k]eep a record showing the names and addresses of all employees employed and the
5 ages of all minors [and] (d) [k]eep at a central location in the state or at the plants or
6 establishments at which employees are employed, payroll records showing the hours worked
7 daily by and the wages paid to, and the number of piece-rate units earned by and any applicable
8 piece rate paid to, employees employed at the respective plants or establishments. These records
9 shall be kept in accordance with rules established for this purpose by the commission, but in any
10 case shall be kept on file for not less than two years.”

11 28. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
12 wage statements to Plaintiff and the Class members and aggrieved employees in accordance with
13 Labor Code §§ 226 and 1174. As a result of the unlawful employment practices discussed herein,
14 the statements provided to Plaintiff and Class members and aggrieved employees have not
15 accurately reflected actual gross wages earned, including overtime and meal/rest premiums and
16 total regular, overtime, and double time hours worked.

17 29. Such failures caused injury to Plaintiff and others, by, among other things,
18 impeding them from knowing the total hours worked and the amount of wages, penalty wages,
19 and phone reimbursement to which they are and were entitled. Defendant’s unlawful
20 employment practices were knowing and intentional, and thus Defendant knowingly and
21 intentionally failed to itemize the gross wages earned, net wages earned, penalty pay, and total
22 hours worked.

23 30. Unlawful business practices. Based upon the above allegations, Defendant has
24 engaged in unfair competition.

25 31. Plaintiff brings this action on behalf of herself, and all other persons similarly
26 situated, to recover from Defendants for failure to comply with California wage and hour laws,
27 and for claims under Business and Professions Code § 17200.
28

1 32. This action has been brought and may properly be maintained as a class action
2 pursuant to the provisions of Code of Civil Procedure § 382 because the proposed class is
3 ascertainable and there is a well-defined community of interest. Plaintiff is among in excess of
4 50 employees who have been similarly injured by Defendants' unlawful employment policies
5 and practices.

6 33. The "Relevant Class Period" or proposed "Class Period" as defined herein
7 commences four years prior to the date of filing this Complaint.

8 34. The "PAGA Period" is defined herein commences one year prior to the date of filing
9 the PAGA Notice letter with the LWDA.

10 35. The PAGA Class, also referred to herein as "aggrieved employees": "All current and
11 former hourly, non-exempt employees of Defendants in California, at any time from one year
12 prior to the filing of the PAGA Notice letter with the LWDA until the resolution of this matter."
13 Plaintiff reserves the right to amend or modify the definition of aggrieved employees with
14 respect to the issues or in any other way.

15 36. Plaintiff brings this action on his behalf and as a class action under Cal. Code of
16 Civil Procedure §382 on behalf of the following defined groups:

17 Proposed Class:

18 "All current and former hourly, non-exempt employees of Defendants in
19 California, at any time from four years prior to the initiation of this action until
20 the date of certification."

21 Proposed Sub-classes are defined as follows:

22 A. All persons who are employed or have been employed by Defendants in the
23 State of California as hourly, non-exempt workers during the period of the
24 relevant statute of limitations, who worked one or more shifts in excess of five
25 (5) hours.

26 B. All persons who are employed or have been employed by Defendants in the
27 State of California as hourly, non-exempt workers during the period of the
28

relevant statute of limitations, who worked one or more shifts in excess of six (6) hours.

C. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shifts in excess of eight (8) hours.

D. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shifts in excess of ten (10) hours.

E. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shifts in excess of twelve (12) hours.

F. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shifts in excess of three and one-half hours (3 ½), but less than or equal to six (6) hours.

G. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shifts in excess of six (6) hours, but less than or equal to ten (10) hours.

H. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who separated their employment from Defendants.

1 I. All persons who are employed or have been employed by Defendants in the
2 State of California as hourly, non-exempt workers during the period of the
3 relevant statute of limitations, who received pay for one or more pay periods.

4 37. This action is brought, and may properly be maintained, as a class action under
5 CCP §382 and/or a representative action under Business & Professions Code §§17200 et seq.
6 and Labor Code §2699 because there is a well-defined community of interest in the litigation,
7 and the proposed Class, PAGA Class, and Subclasses (collectively “Class”) are easily
8 ascertainable.

9 A. Numerosity. The Proposed Class is so numerous that joinder of all members is
10 impractical. Plaintiff is informed and believes, and on that basis alleges, that
11 during the relevant time period, Defendants employed over 50 putative Class
12 members and aggrieved employees who are geographically dispersed and who
13 satisfy the definition of the proposed Class. As such, a class action is the only
14 available method for the fair and efficient adjudication of this controversy.
15 Membership in the Proposed Class can be easily ascertained by an
16 examination and analysis of employee and payroll records, among other
17 records within Defendants’ possession and control.

18 B. Typicality: Plaintiff’s claims are typical of the claims of the Class members
19 and aggrieved employees. Plaintiff, like others similarly situated, was
20 subjected to Defendants’ common, unlawful policies, practices, and
21 procedures described above. The Plaintiff’s positions at the company was
22 typical of those of other Class members and aggrieved employees. Plaintiff’s
23 claims are typical of the claims of each Class Member because each have
24 sustained damages arising out of and caused by Defendants’ common course
25 of conduct, as alleged herein. As such, Plaintiff has the same interests in this
26 matter as all members of the Class.

27 C. Adequacy: Plaintiff will fairly and adequately protect the interests of the
28 members of the Class. Plaintiff has retained counsel competent and

1 experienced in complex class actions and California labor and employment
2 litigation.

3 D. Commonality: Common questions of law and fact exist, including but not
4 limited to the following:

- 5 i. Whether Defendants violated wage and hour laws by failing to
6 pay employees for all hours worked;
- 7 ii. Whether Defendants violated wage and hour laws by requiring
8 that employees communicate via phone and text when off the
9 clock using their personal devices without compensating
10 employees for their time or the expense associated with the use
11 of their phone;
- 12 iii. Whether Defendants violated wage and hour laws by failing to
13 provide all required meal periods;
- 14 iv. Whether Defendants violated wage and hour laws by failing to
15 provide all required rest periods;
- 16 v. Whether Defendants' policy and practice concerning meal breaks
17 was unlawful;
- 18 vi. Whether Defendants' policy and practice concerning auto-
19 deducting meal breaks was unlawful;
- 20 vii. Whether Defendants' policy and practice concerning rest breaks
21 was unlawful;
- 22 viii. Whether Defendants unlawfully failed to keep and furnish Class
23 members and aggrieved employees with accurate, itemized
24 records of hours worked, in violation of Labor Code §§ 226 and
25 1174;
- 26 ix. Whether Defendants' policy and practice of failing to pay
27 employees all wages owed twice per month violates Labor Code
28 §204(a);

- x. Whether Defendants' policy and practice of failing to pay its employees all wages due within the time required by law after their employment ended violates the law and warrants waiting time penalties under Cal. Labor Code §§ 200, 201, 202, 203, and 204; and
- xi. The proper measure of damages sustained and the proper measure of restitution recoverable by Plaintiff, the Class members and aggrieved employees, and Subclass members and aggrieved employees.
- xii. Whether the Class members and aggrieved employees are entitled to injunctive relief to enjoin any further violations of wage and labor laws;
- xiii. Whether Defendants, and each of them, are/were participants in the alleged unlawful and/or tortious conduct;
- xiv. Whether Defendants' conduct was willful and reckless;
- xv. The effect upon and the extent of injuries suffered by Plaintiff and the Plaintiff Class and the appropriate amount of reimbursement, restitution, damages, or other compensation;
- xvi. What is the extent of liability of each Defendant, including DOE defendants, to each Class and Subclass member?

E. Superiority: A class action is superior to other available methods of the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where the damage suffered by individual plaintiffs, while not inconsequential, makes individual actions impracticable given the expenses and burdens associated with seeking individual relief. Prosecuting over 50 identical, individual lawsuits does not promote judicial efficiency or equity and consistency in judicial results. Moreover, the Class is a group of hourly, low-wage earning employees engaged in hard labor in the tree

1 trimming and clearing industry. They rely on their wages and requiring that
2 each individual take time away from work to prosecute individual actions
3 would be inequitable and result in undue hardship for the individual Class
4 members and aggrieved employees and their families. Public policy favors
5 efficient resolution of their claims and uniform enforcement of California
6 Labor laws against entities skirting their legal obligations at the expense of a
7 vulnerable working population.

8 38. Manageability: Plaintiff is informed and believes that all allegations in this
9 Complaint are capable of being determined on the same evidence and based primarily on review
10 of corporate records and key testimony of Defendants' corporate representatives. To the extent
11 statistical analysis and representative evidence is necessary, Plaintiff and proposed class counsel
12 will employ competent experts and consultants in the field to determine and review evidence for
13 both issues of liability and damages in a scientifically reliable manner.

14 39. Plaintiff requests, pursuant to Rule 1857(a)(1) and Rule 3.766 of the California Rules
15 of Court, that the absent Class and Subclass members and aggrieved employees be notified by the
16 best notice practicable under the circumstances, including individual notice to all members who
17 can be identified through reasonable effort. The names and address of the Class and Subclass
18 members and aggrieved employees are available from Defendants.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY ALL WAGES, INCLUDING OVERTIME WAGES, AGAINST ALL**
21 **DEFENDANTS**

22 40. Plaintiff incorporates by reference in this cause of action each allegation of the
23 preceding paragraphs as though fully set forth herein.

24 41. Section 2(H) or Wage Order 9 defines "hours worked" as "the time during which an
25 employee is subject to the control of an employer, and including all the time the employee is
26 suffered or permitted to work, whether or not required to do so."

27 42. Labor Code §§1194 and 1197 require Defendants to compensate employees for all
28 hours worked at least at a minimum wages as established by the Wage Order.

1 43. Here, as set forth above, Defendants did not pay for all hours worked and frequently
2 required employees to work off the clock after clocking out for the day and by calling and
3 texting employees while off the clock. Defendants also automatically deducted meal periods
4 when employees were actually required to work right through them.

5 44. Defendants' failure to pay all wages earned resulted in a failure to pay all wages
6 earned twice per month pursuant to §204(a).

7 45. Employees who are not paid for off the clock hours worked are denied wages,
8 including even minimum wages in violation of Labor Code §1197.

9 46. Labor Code § 1194 entitles an employee receiving less than the minimum wage,
10 which is what happens when employees are paid no wages for off the clock work, to recover in a
11 civil action the unpaid balance of the full amount of this minimum wage, including interest
12 thereon, reasonable attorneys' fees, and costs of suit.

13 47. Labor Code § 1194.2 entitles an employee receiving less than the minimum wage to
14 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
15 thereon.

16 48. Labor Code §1197.1 subjects and employer who causes an employee to be paid less
17 than minimum wage to: (1) a civil penalty equal to one hundred dollars (\$100) for each
18 underpaid employee for each pay period in which the employee is underpaid for an initial
19 violation that is intentionally committed; (2) two hundred and fifty dollars (\$250) for a
20 subsequent violation for the same specific offense for each underpaid employee for each pay
21 period regardless of whether the initial violation is intentionally committed; (3) restitution of
22 wages; and (4) liquidated damages, all payable to the employee.

23 49. During the class period, Defendants have refused and failed to pay Plaintiff and the
24 Class for all hours worked. As a consequence, Defendants have failed to pay minimum wages to
25 Plaintiff and the Class for all hours worked as alleged above in violation of California Labor
26 Code §§218, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the Wage Order.

27 50. As a result of Defendant's conduct, Plaintiff, Class members and aggrieved
28 employees and members of the relevant subclasses have been deprived of payment for all hours

1 worked and minimum wage for all hours worked in an amount to be determined at trial, and are
2 entitled to recovery of the unpaid balance of the full amount of these wage, including interest
3 thereon, reasonable attorneys' fees, and costs of suit pursuant to Labor Code §1194, 218.5, and
4 Cal. Code of Civ. Pro. §1021.5; liquidated damages and interest thereon pursuant to Labor Code
5 §1194.2; and civil penalties, restitution of wages, and liquidated damages pursuant to Labor
6 Code §1197.1.

7 51. Plaintiff alleges on information and belief that Defendants' failure to pay the Class
8 members and aggrieved employees for all hours worked as alleged in this cause of action, was
9 willful, and thus entitles the Class members and aggrieved employees to penalties under Labor
10 Code § 203. Specifically, Labor Code § 203 provides that an employee's wages shall continue as
11 a penalty until paid or for a period of up to 30 days from the time they were due, whichever
12 period is shorter.

13 52. In addition, and pursuant to Labor Code § 558, Plaintiff requests that this Court
14 award civil penalties as set forth in § 558 for each pay period during which Defendants failed to
15 pay the Class members and aggrieved employees as alleged above.

16 **SECOND CAUSE OF ACTION**

17 **MEAL PERIOD VIOLATIONS AGAINST ALL DEFENDANTS**

18 53. Plaintiff incorporates by reference in this cause of action each allegation of the
19 preceding paragraphs as though fully set forth herein.

20 54. Labor Code §512 provides, “[a]n employer may not employ an employee for a
21 work period of more than five hours per day without providing the employee with a meal period
22 of not less than 30 minutes... An employer shall not employ an employee for a work period of
23 more than 10 hours per day without providing the employee with a second meal period of not
24 less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an
25 employee to work during any meal... period mandated by an applicable order of the Industrial
26 Welfare Commission.”

27 55. Wage Order 9 requires employers to authorize and permit employees to take an
28 uninterrupted 30 minute meal period after no more than 5 hours of work. It further provides,

1 “[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal period
2 shall be considered an ‘on duty’ meal period and counted as time worked.” Pursuant to Labor
3 Code §1198, “the employment of any employee... under conditions of labor prohibited by the
4 order is unlawful.”

5 56. Pursuant to *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 273 P.3d 513
6 (2012), a first meal period must begin no later than the start of an employee's sixth hour of work.

7 57. As a result of Defendants’ failure to afford legally compliant first and second meal
8 periods as set forth above, Defendants are liable to Plaintiff and the Class and relevant subclasses
9 for one hour of additional pay at the regular rate of compensation for each workday that the
10 required uninterrupted meal periods were not provided, pursuant to Cal. Labor Code §226.7 and
11 Wage Order No. 9-2001, § 11(b). Upon information and belief, Defendants never paid such
12 premiums to Plaintiff and the Class.

13 58. Plaintiff and the Class are entitled to interest, applicable penalties, and attorneys’
14 fees and costs.

15 59. Plaintiff also seeks injunctive relief requiring Defendants to comply with the
16 California Labor Code and relevant Wage Orders with respect to meal periods, declaratory relief
17 that Defendants’ policies regarding such are unlawful, and attorneys’ fees and costs, and under
18 Cal. Code of Civ. Pro. §1021.5.

19 60. Defendants’ failure to pay meal period premiums was done willfully, in bad faith,
20 in knowing violation of the California Labor Code and the IWC Wage Orders.

21 **THIRD CAUSE OF ACTION**

22 **REST PERIOD VIOLATIONS AGAINST ALL DEFENDANTS**

23 61. Plaintiff incorporates by reference in this cause of action each allegation of the
24 preceding paragraphs as though fully set forth herein.

25 62. Plaintiff and the Class and relevant subclasses regularly worked more than three
26 and one-half hours in a day without being authorized and permitted to take a 10-minute duty-free
27 rest period, and regularly worked more than six hours in a day without being authorized and
28

1 permitted to take two, 10-minute duty-free rest periods per four hours or major fraction thereof,
2 as required under Cal. Labor Code § 226.7 and Wage Order No. 5-2001, § 12(a).

3 63. Plaintiff and Class members and aggrieved employees did not receive all required
4 rest breaks. Rest breaks were not integrated into employee schedules, Defendants did not relieve
5 Plaintiff of Class members and aggrieved employees for breaks, and if they were relieved for
6 breaks, they had to keep their walkie-talkies on them at all times and respond to any requests. As
7 a result, employees were unable to take compliant rest periods.

8 64. As a result of Defendant's failure to afford all proper rest periods, they are liable to
9 the Plaintiff and Class for one hour of additional pay at the regular rate of compensation for each
10 workday that the proper rest periods were not provided, pursuant to Cal. Labor Code §226.7 and
11 Wage Order No. 5-2001, § 12(b). Upon information and belief, Defendants never paid such
12 premiums to Plaintiff and the Class.

13 65. Plaintiff and the Class are entitled to interest, applicable penalties, and attorneys'
14 fees and costs.

15 66. Plaintiff also seeks injunctive relief requiring Defendants to comply with the
16 California Labor Code and Wage Orders with respect to rest periods, declaratory relief that
17 Defendants' policies regarding such are unlawful, and attorneys' fees and costs, and under Cal.
18 Code of Civ. Pro. §1021.5.

19 67. Defendants' failure to pay rest period premiums was done willfully, in bad faith, in
20 knowing violation of the California Labor Code and the IWC Wage Order.

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO REIMBURSE FOR REQUIRED BUSINESS EXPENSES AGAINST** 23 **ALL DEFENDANTS**

24 68. Plaintiff incorporates by reference in this cause of action each allegation of the
25 preceding paragraphs as though fully set forth herein.

26 69. California Labor Code §2802 requires employers to indemnify employees for
27 necessary expenditures or losses incurred by employees in direct consequence of discharge of
28 duties.

70. Defendants required Plaintiff and the Class and relevant subclass to utilize their personal cell phones for work purposes but failed to reimburse employees for this use as required under the Labor Code. Because Plaintiff and the Class were forced to pay this expense out of their own pocket, this causes the effective wage earned to fall below the agreed rate of pay, and when combined with other violations, the effective wage fell below the required minimum wage.

71. As a result of Defendants' conduct, Plaintiff and the Class will seek reimbursement for required expenses, as well as reasonable attorneys' fees, and costs of suit pursuant to Labor Code § 218.5 and CCP 1021.5.

72. Plaintiffs allege on information and belief that Defendants' failure to pay the Class members and aggrieved employees for this expense, which decreased their effective rate of pay resulting in unpaid and/or underpaid wages owed, was willful, and thus entitles the Class members and aggrieved employees to penalties under Labor Code § 203. Specifically, Labor Code § 203 provides that an employee's wages shall continue as a penalty until paid or for a period of up to 30 days from the time they were due, whichever period is shorter.

73. In addition, and pursuant to Labor Code § 558, Plaintiff requests that this Court award civil penalties as set forth in § 558 for each pay period during which Defendants failed to pay the Class members and aggrieved employees as alleged above.

FIFTH CAUSE OF ACTION

LATE PAY AND WAITING TIME PENALTIES AGAINST ALL DEFENDANTS

74. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

75. At all times relevant hereto, Labor Code Section 201 provided that, if an employer such as Defendants discharged an employee such as a member of the Class, the wages earned and unpaid at the time of discharge were due and payable immediately. Furthermore, Labor Code Sections 202 provided that, if an employee such as a member of the Class voluntarily left his or her employment, the wages earned and unpaid must be paid by the employer within seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours

1 previous notice of his or he intention to leave, in which case the employee is entitled to receive
2 his or her wages immediately at the time of quitting.

3 76. Plaintiff is informed and believes and, based thereon, alleges that, during the Class
4 period, Defendants willfully failed to pay former employees in the Class their earned and unpaid
5 wages, either at the time of their discharge or within seventy-two (72) hours of their quitting.
6 Furthermore, Defendants failed to pay Plaintiff, on a timely basis, all of the wages due her at the
7 time of termination or quitting, including overtime wages. Defendants therefore violated Labor
8 Code Section 201 and 202.

9 77. As alleged above, by failing to comply with California labor laws governing the
10 payment of all hours worked, reimbursement of required expenses, vacation wages, meal and rest
11 break violations, and other penalties and damages as set forth above, Defendants underpaid the
12 actual amount of regular hours and overtime hours worked by Plaintiffs and the rest of the
13 Waiting Time Subclass. These unpaid amounts were still owing to former employees in the
14 Class when they ended their employment with Defendants. Consequently, Defendants failed to
15 timely pay all wages due former employees in the Class at the time that their employment ended
16 pursuant to Labor Code §§ 203 and 227.3.

17 78. During the Class Period, Labor Code Section 203 provided that, if employers such
18 as Defendants willfully fail to pay any wages of an employee who is discharged or who quits, the
19 wages of the employee shall continue as a penalty from the due date thereof at the same rate until
20 paid or until an action therefore is commenced, but the wages shall not continue for more than
21 thirty (30) days. Accordingly, Class members and aggrieved employees who were discharged or
22 who quit during the Class Period are entitled to receive their wages for each day they were not
23 paid, at their regular rate of pay, up to a maximum of thirty (30) days.

24 79. Moreover, Defendants were required to pay Plaintiff and the Class all wages
25 earned twice during each calendar month pursuant to Labor Code §204(a). Defendants failed to
26 pay all wages earned to employees as a result of the unlawful employment policies and practices
27 discussed herein. As a result of these practices, employees were underpaid for hours worked,
28

1 including overtime and penalty wages, and this underpayment resulted in a failure to pay all
2 wages owed twice per month.

3 80. Plaintiff will seek penalties pursuant to Labor Code §558(a)(3) for herself and
4 members of the proposed Class and relevant subclasses for each violation of Labor Code §203
5 during the Class Period, in an amount according to proof based on Defendants' corporate and
6 payroll records.

7 **SIXTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS AGAINST** 9 **ALL DEFENDANTS**

10 81. Plaintiff incorporates by reference in this cause of action each allegation of the
11 preceding paragraphs as though fully set forth herein.

12 82. California Labor Code § 226(a) provides that "[e]very employer shall,
13 semimonthly or at the time of each payment of wages, furnish each of his or her employees...an
14 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked...,
15 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on
16 a piece-rate basis, (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period
17 for which the employee is paid, (7) the name of the employee and his or her social security
18 number..., (8) the name and address of the legal entity that is the employer, and (9) all applicable
19 hourly rates in effect during the pay period and the corresponding number of hours worked at
20 each hourly rate by the employee."

21 83. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
22 wage statements to Plaintiff, the Class, and relevant subclasses in accordance with Labor Code
23 §§ 226. As a result of the unlawful employment practices discussed herein, the statements
24 provided to Plaintiff and the Class have not accurately reflected actual gross wages earned,
25 including overtime and meal/rest premiums and total regular, overtime, and double time hours
26 worked.

27 84. California Labor Code § 226(e) provides that an employee suffering injury as a
28 result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a)

1 is entitled to recover the greater of his or her actual damages or a penalty of \$50 for the initial
2 pay period in which a violation occurs and \$100 per employee for each violation in a subsequent
3 pay period (up to a maximum of \$4,000), in addition to attorneys' fees and costs.

4 85. Additionally, Defendants knowingly and intentionally failed to provide timely,
5 accurate, itemized wage statements to Plaintiff and Class members and aggrieved employees in
6 accordance with Labor Code §§ 226 and 1174. The statements provided to Plaintiff and Class
7 members and aggrieved employees have not accurately reflected actual gross wages earned,
8 including required reimbursements, overtime and meal/rest premiums, reporting time pay, and
9 vacation pay among other compensation, and the total hours worked by employees. Such failures
10 caused injury to Plaintiff and the Wage Statement Class members and aggrieved employees, by,
11 among other things, impeding them from knowing the total hours worked and the amount of
12 wages to which they are and were entitled.

13 86. Defendants' violations of Labor Code section 226 are ongoing and will continue
14 until and unless this Court enters an injunction barring such violations.

15 87. Plaintiff and the Class members and aggrieved employees are therefore entitled to
16 the damages and penalties, plus attorneys' fees and costs, provided for under Labor Code §§
17 226(e) and (g). Pursuant to Labor Code § 226(g), Plaintiff and the Class members and aggrieved
18 employees are also entitled to and seek injunctive relief requiring Defendants to comply with
19 Labor Code 226(a).

20 88. Labor Code § 1174 provides that "[e]very employer employing labor in this state
21 shall ... (c) [k]eep a record showing the names and addresses of all employees employed and the
22 ages of all minors [and] (d) [k]eep at a central location in the state or at the plants or
23 establishments at which employees are employed, payroll records showing the hours worked
24 daily by and the wages paid to, and the number of piece-rate units earned by and any applicable
25 piece rate paid to, employees employed at the respective plants or establishments. These records
26 shall be kept in accordance with rules established for this purpose by the commission, but in any
27 case shall be kept on file for not less than two years."

89. Labor Code § 1174.5 provides that “[a]ny person employing labor who wilfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records maintained by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

90. Plaintiff alleges on information and belief that Defendants knowingly and intentionally failed to furnish the Class members and aggrieved employees and subclasses with accurate itemized statements for each pay period that they worked and failed to maintain accurate payroll records of the Class members and aggrieved employees as mandated by Labor Code §§ 226 and 1174. As such, the Class members and aggrieved employees are entitled to civil penalties and an award of costs and attorney's fees under § 226(e). In addition, the Class members and aggrieved employees are entitled to recover civil penalties under § 1174.5.

SEVENTH CAUSE OF ACTION

UNFAIR PRACTICE UNDER THE UNFAIR COMPETITION ACT (“UCL”)
AGAINST ALL DEFENDANTS

91. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

92. Defendants knowingly committed, and upon information and belief continue to commit, ongoing unlawful business practices within the meaning of the UCL, including, but not limited to unlawful practices as described in the causes of action articulated above, and hereby incorporated herein.

93. Plaintiff lost money and property as a result of Defendants' unlawful business practices described above.

94. Pursuant to the UCL, Plaintiff and all Class members and aggrieved employees are entitled to restitution of money or property acquired by Defendants by means of such unlawful business practices, in amounts not yet known, but to be ascertained at trial.

95. Pursuant to the UCL, Plaintiff and Class members and aggrieved employees are entitled to injunctive relief against Defendants' ongoing unlawful business practices. If an

injunction does not issue enjoining Defendants from engaging in the unlawful business practices described above, Plaintiff and the general public will be irreparably injured.

96. Plaintiff has no plain, speedy, and adequate remedy at law. Defendants, if not enjoined by this Court, will continue to engage in the unlawful business practices described above in violation of the UCL, in derogation of the rights of Plaintiff and Class members and aggrieved employees and of the general public.

97. Plaintiff's success in this action will result in the enforcement of important rights affecting the public interest by conferring a significant benefit upon the general public.

98. Defendants' numerous violations of local and California law, as well as the other statutory and regulatory violations alleged herein, constitute unlawful business actions and practices in violation of Business and Professions Code § 17200, et seq.

99. Pursuant to Business and Professions Code § 17200, et seq., Plaintiff and the Class members and aggrieved employees are entitled to restitution of unpaid wages and penalty pay, among other relief alleged herein, that were withheld and retained by Defendants during a period that commences four years prior to the filing of this action. Plaintiffs are further entitled to a permanent injunction requiring Defendants to properly reimburse employees for all required expenses, properly calculate and pay all hours worked, provide meal/rest periods to all workers as defined herein, pay all accrued vacation pay upon separation, comply with California Sick Pay laws, pay reporting time pay when required, comply with California Day of Rest laws, timely pay wages upon discharge, maintain accurate wages statements and payroll records, in addition to an award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and other applicable law, and costs.

EIGHTH CAUSE OF ACTION

STATUTORY PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE §2698 *et seq.* AGAINST ALL DEFENDANTS

100. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

1 101. Under the Private Attorneys General Act of 2006, Labor Code §§2698-2699.5, an
2 aggrieved employee, on behalf of herself and other current or former employees, may recover
3 penalties under any provision of the Labor Code that provides for civil penalties. These penalties
4 are in addition to any other relief available under the Labor Code. Plaintiff is an aggrieved
5 employee under PAGA.

6 102. As set forth above, Defendants have committed numerous violations for which the
7 Labor Code provides for penalties, including violations of all applicable Labor Code provisions
8 set forth in the foregoing causes of action. Labor Code §2699.5 identifies the aforementioned
9 Labor Code provisions as statutes to which §2699.3's procedural requirements must be met
10 before a penalty may be assessed under §2699(f). Plaintiff has complied with the procedural
11 requirements specified in §2699.3 by providing written notice to the Defendants and the Labor &
12 Workforce Development Agency ("LWDA"). See Exhibit 1 attached hereto, which is a true and
13 correct copy of the Notice correspondence showing compliance with §2699.3. No notice of
14 intent to investigate the alleged violations was provided within the statutory period.
15 Consequently, Plaintiff has exhausted administrative remedies, and on behalf of themselves and
16 all other aggrieved current and former employees of Defendants. Plaintiff, therefore, now
17 pursues this cause of action as permitted by §2698, et seq.

18 103. Enforcement of statutory provisions enacted to protect workers and to ensure proper
19 and prompt payment of wages due to employees is a fundamental public interest in California.
20 Consequently, Plaintiff's success in this action will result in the enforcement of important rights
21 affecting the public interest and will confer a significant benefit upon the general public. Private
22 enforcement of the rights enumerated herein is necessary, as no public agency has pursued
23 enforcement. Plaintiff is incurring a financial burden in pursuing this action and it would be
24 against the interests of justice to require payment of attorneys' fees and costs from any recover
25 that might be obtained herein, pursuant to, inter alia, Labor Code §§2698, et seq., and Code of
26 Civil Procedure §1021.5
27
28

104. In addition, if Plaintiff succeeds in enforcing these rights affecting the public interest, then attorneys' fees may be awarded to Plaintiff and against Defendants under Code of Civil Procedure §1021.5 and other applicable law in part, because:

a. A successful outcome in this action will result in the enforcement of important rights affecting the public interest by requiring Defendants to comply with the wage and hour laws and California's unfair business practice law;

b. This action will result in a significant benefit to Plaintiff, the Class, and the general public by bringing to a halt unlawful and/or unfair activity;

c. Unless this action is prosecuted, members of the Class and general public will not recover those moneys, and many of Defendants' employees would not be aware that the acts and practices they were subjected to by Defendants were wrongful;

d. Unless this action is prosecuted, Defendants will continue to mislead their employees about the true nature of their rights and remedies under the wage and hour laws; and

105. An award of attorneys' fees and costs is necessary for the prosecution of this action and will result in a benefit to Plaintiff, the Class, aggrieved employees, and to consumers in general, by preventing Defendants from continuing to circumvent the wage and hour statutes and frustrate the long-standing recognition by the California legislature and the courts that such statutes, as pled herein, are not merely a matter of private concern between employer and employee to be eviscerated by considerations of waiver, contributory negligence, good or bad faith, and private agreements. Rather, the wage and hour statutes have been described as a matter of public concern, were designed to provide minimum substantive guarantees to individual workers and are essential to public welfare.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the Proposed Class, requests judgment and the following specific relief against Defendants as follows:

A. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure § 382;

B. That the Court determine that this action may be maintained as a PAGA representative action under Cal. Labor Code. §2698 et seq.;

- 1 C. Provision of class notice to all members of the Class;
- 2 D. That Defendant is found to have violated the above-referenced provisions of
- 3 the Labor Code, CCR and IWC Wage Order 9-2001 as to Plaintiff, Class
- 4 members and aggrieved employees and relevant Subclass members and
- 5 aggrieved employees;
- 6 E. That Defendant's actions are found to be willful and/or in bad faith to the
- 7 extent necessary under §§ 201, 202, 203, and 558 of the California Labor
- 8 Code for willful failure to pay all compensation owed at the time of separation
- 9 to Plaintiff, Class and relevant Subclass members and aggrieved employees no
- 10 longer employed by Defendants, as to §226 and 1174 of the California Labor
- 11 Code for willful failure to provide the required accurate and itemized wage
- 12 statements to Plaintiff, Class and relevant Subclass members and aggrieved
- 13 employees;
- 14 F. That Plaintiff, Class members and aggrieved employees and relevant Subclass
- 15 members and aggrieved employees receive an award in the amount of unpaid
- 16 wages owed, including interest thereon, and penalties as provided in the Labor
- 17 Code, CCR and Wage Order, including under Labor Code §§ 203, 510, and
- 18 558, subject to proof at trial;
- 19 G. That Defendants be ordered to pay restitution to Plaintiff, Class members and
- 20 aggrieved employees and relevant Subclass members and aggrieved
- 21 employees for amounts acquired through Defendants' unlawful activities
- 22 pursuant to Business and Professions Code §§ 17200-05 and enjoined to cease
- 23 and desist from unlawful and unfair activities in violation of California
- 24 Business and Professions Code § 17200 et. seq.;
- 25 H. That Plaintiff, Class members and aggrieved employees and relevant Subclass
- 26 members and aggrieved employees receive an award of reasonable attorneys'
- 27 fees and costs pursuant to Code of Civil Procedure §1021.5, Labor Code
- 28 §226, 218.5, and 1194 and/or applicable laws;

- 1 I. That the Court award penalties pursuant to Labor Code §2698 et seq.;
- 2 J. That the Court issue declaratory relief that Defendant's challenged policies are
- 3 unlawful; and
- 4 K. That the Court order further relief, in law and equity, as it deems appropriate
- 5 and just.
- 6

7 DATED: March 31, 2020

8 KOUL LAW FIRM

9 
BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff
10 COURTNEY DEAN and putative class
11 members and aggrieved employees
12
13
14

15 ***DEMAND FOR JURY TRIAL***

16 Plaintiff, on behalf of herself and the putative class, hereby demands trial by jury to the

17 full extent permitted by law.

18

19 DATED: March 31, 2020

20 KOUL LAW FIRM

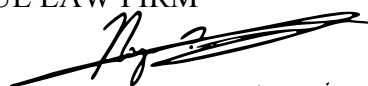
21 
BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff
22 COURTNEY DEAN
23 and putative class members and aggrieved
24 employees
25
26
27
28

EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

January 22, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Eli's Auto Center II, Inc.
8435 W. 3RD STREET
LOS ANGELES CA 90048

Eli's Collision Repair of West Los Angeles,
Inc.
8435 W. 3RD STREET
LOS ANGELES CA 90048

Eli's Collision Repair I, Inc.
8435 W. 3RD STREET
LOS ANGELES CA 90048

Eli's Collision Repair of South Bay, Inc.
8435 W. 3RD STREET
LOS ANGELES CA 90048

Re: PAGA Notice Pursuant to California Labor Code §2698 *et seq.*
Claimant: Courtney Dean
Employers: ELI'S AUTO CENTER II, INC., ELI'S COLLISION REPAIR OF
WEST LOS ANGELES, INC., ELI'S COLLISION REPAIR I, INC., and ELI'S
COLLISION REPAIR OF SOUTH BAY, INC.

Dear Sir or Madam:

Courtney Dean ("Claimant") has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM to represent her, and all other aggrieved employees, for wage and hour claims against her former employers, ELI'S AUTO CENTER II, INC., ELI'S COLLISION REPAIR OF WEST LOS ANGELES, INC., ELI'S COLLISION REPAIR I, INC., and ELI'S COLLISION REPAIR OF SOUTH BAY, INC. (hereafter "Employers" or "Eli's.")

Eli's owns four auto body shops in the Los Angeles area. Claimant has worked at three of the four locations and was an hourly employee of Eli's until April 25, 2019. Claimant is an aggrieved employee and her proposed PAGA representative action would represent numerous current and former aggrieved employees.

Employer has violated, and/or has caused to be violated, several Labor Code provisions, and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay for All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 1199, 2699 *et seq.*)

Section 2(H) or Wage Order 9 “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.”

Claimant and aggrieved employees were not paid for all hours worked, including overtime hours worked because of Employers’ policy of auto-deducting meal periods, requiring employees to continue working after clocking out, and calling and texting employees while off the clock. Employer also failed to reimburse employees for required personal cell phone use.

Employer have been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below:

Post-Shift Work and Off-the-Clock Communications

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employers’ control but not compensated for their time.

Claimant estimates that she worked 5-6 unpaid, off-the-clock hours per week. Frequently, after clocking out, Claimant would receive calls from adjustors or estimators and Claimant was required to respond immediately. She also received numerous text messages and calls on her personal cell phone daily while off the clock, some calls as late as 11 pm. Claimant and aggrieved employees were required to take the calls from their employer, and respond to text messages on their personal time. The calls and messages were about matters related to work. Claimant and aggrieved employees were not paid for time spent communicating with their employer while off the clock.

This resulted in many unpaid hours worked for all aggrieved employees required to communicate regarding work matters with their employer while off the clock. Employers have violated Labor Code §§510 1194, and 1198, and Wage Order 9. Employer are liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Failure to Pay Wages- Required Minimum Wage

Employers failed to pay Claimant and aggrieved employees for all hours worked as a result of the practice described herein. Because Claimant and the aggrieved employees were paid at or near minimum wage, Employers’ failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197,

1197.1, 1199 and Wage Order 9-2001. Employers are liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties.

Claimant and aggrieved employees would receive calls and text messages from supervisors, adjusters, and estimators on their personal time, while not at work. This was a daily occurrence, and Claimant would receive calls as late as 11 pm and numerous text messages per day.

Employers required Claimant and employees to utilize their personal cell phones for work purposes but failed to reimburse Claimant and employees for this use as required by the Labor Code. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 2698 *et seq.*)

Employers have failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law.

Claimant states that her rest breaks were constantly interrupted and, as a result, she and aggrieved employees were unable to take compliant rest periods. She was required to keep her walkie talkie with her at break and lunch and respond when called, so she was never free of all duties. In addition, she frequently received calls during breaks that she was required to take. If a customer came in and asked for her while she was on break, she was required to meet with that customer immediately. Claimant states that she and her coworkers complained numerous times about their inability to take a compliant rest break, but no changes were ever made.

Claimant and other aggrieved employees were unable to take compliant rest periods. Employer failed to pay claimants and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. As a derivative claim, claimants also allege that their pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 2699 *et seq.*)

During Claimant's employment, Employers failed to maintain a compliant meal period policy and practice. Employers failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

On many occasions, Claimants was unable to take a meal period, and she was never provided a second meal period. Claimant and aggrieved employees were required to keep their walkie talkies with them during meal periods and respond to them when called, so they were never free of all duties. Frequently, Claimant was unable to take a meal break at all. However, regardless of whether she took a break, meal breaks were automatically deducted from her hours worked. Claimant states that she missed a meal break 3-4 times per week. She further explains that if she stepped out for lunch, Employers would call her to come back in. She found it impossible to be relieved of all duties for a compliant meal period. She was never paid meal period penalty wages for these missed and noncompliant meal periods.

Employers failed to permit Claimant and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202, 203, 204(a) and 2698 *et seq.*)

Failure to Pay Wages Due Upon Termination

As set forth above, due to Employers' unlawful employment practices, Employers knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated. Employers willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §203, Claimant and similarly situated individuals are now also entitled to

recover up to thirty (30) days of wages due to Employers' "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employers violated §§201, 202 and 203, Employers are liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Claimant believes that other employees who separated from the companies, whether voluntary or involuntary, were also denied payment of wages on time as required by §203. Claimant will seek civil penalties pursuant to §558 (a)(3) for herself and other aggrieved employees for each violation of §203 and will seek civil penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and Development Agency (LWDA) against Employers if authorized to file a representative action on behalf of the State of California.

Failure to Pay All Wages Owed Twice Per Month

Employers were required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employers failed to pay all wages earned to employees because of employer's failure to properly pay for all hours worked, including overtime hours worked and meal and rest break penalty wages. This underpayment resulted in failure to pay all wages owed twice per month resulting in liability under Labor Code §210 for violation of §204.

Failure to Furnish and Maintain Accurate Wage Statements and Payroll Records

(Cal. Labor Code §§ 226(a), 226.3, 1174, 1174.5, 2698 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226, 226.3, 1174, and 1174.5. Derivative of the claims alleged above, the statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, including overtime and penalty wages, phone reimbursement, and total hour worked. Such failures caused injury to Claimant and aggrieved employees by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled, nor the accurate rate of overtime pay they were entitled to. Employers are liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Conclusion

Employers have violated several California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court.

Sincerely,



Nazo Koulloukian, Esq.
Attorney for Claimant