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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE – RIVERSIDE HISTORIC COURTHOUSE

BRADLEY FALK, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

v.

PALM SPRINGS AUCTIONS, INC., a
California corporation; KEITH
MCCORMICK, an individual; and DOES 1
through 25, inclusive,

Defendants.

Case No. RIC2001412

[Assigned for All Purposes to the Hon.
Sunshine S. Skyes; Dept. 6]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES:**

- 1. FAILURE TO PAY MINIMUM
WAGES (*LABOR CODE* §§ 1194,
1194.2 & 1197)**
- 2. FAILURE TO PAY OVERTIME
WAGES (*LABOR CODE* §§ 510 &
1198)**
- 3. FAILURE TO TIMELY PAY
WAGES (*LABOR CODE* § 204)**
- 4. FAILURE TO FURNISH
ACCURATE WAGE STATEMENTS
(*LABOR CODE* § 226(a))**
- 5. FAILURE TO PROVIDE
REQUIRED MEAL PERIODS
(*LABOR CODE* §§ 226.7 and 512(a))**
- 6. FAILURE TO PROVIDE
REQUIRED REST BREAKS (*LABOR
CODE* § 226.7)**
- 7. FAILURE TO REIMBURSE
BUSINESS EXPENSES (*LABOR
CODE* § 2802)**

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8. **FAILURE TO PAY ALL WAGES DUE TO A DISCHARGED EMPLOYEE AND WAITING TIME PENALTIES (*LABOR CODE* §§ 201, 202 & 203)**
 9. **UNFAIR COMPETITION IN VIOLATION OF *BUSINESS AND PROFESSIONS CODE* § 17200, *et seq.***
 10. **VIOLATION OF *LABOR CODE* § 558 FOR CAUSING VIOLATION OF *LABOR CODE* § 510**
 11. **AGE DISCRIMINATION IN VIOLATION OF FEHA (*GOVERNMENT CODE* § 12940, *et seq.*)**
 12. **FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF FEHA (*GOVERNMENT CODE* § 12940, *et seq.*)**
 13. **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
 14. **CIVIL PENALTIES PURSUANT TO PRIVATE ATTORNEYS' GENERAL ACT ("PAGA")**

[DEMAND FOR JURY TRIAL]

Complaint Filed: June 1, 2020
Trial Date: None

Plaintiff BRADLEY FALK ("Plaintiff") alleges as follows on knowledge as to himself and his own acts, and on information and belief as to all other matters:

I.

NATURE OF ACTION

1. This case involves defendant-employers' deliberate scheme to misclassify their workers as independent contractors, thereby denying them the fundamental protections due to employees under California law. This class action seeks to enjoin the defendants' unlawful conduct, to obtain restitution of unpaid wages and unlawful deductions made from workers' pay, against Defendants PALM SPRINGS AUCTIONS, INC. ("PSA"), KEITH MCCORMICK

1 (“McCormick”), and DOES 1 through 25, inclusive, (collectively “Defendants”) under the *Labor*
2 *Code*, the California Industrial Welfare Commission’s (“IWC”) Wage Orders, *Business and*
3 *Professions Code* § 17200, *et seq.*, and other statutes and regulations applicable to non-exempt
4 employees in the State of California.

5 2. This class action is brought against Defendants—who run large classic and exotic
6 car auctions twice a year and car sales year round in Palm Springs—for engaging in a pattern and
7 practice of willfully misclassifying their workers, including Plaintiff, as independent contractors
8 instead of affording them their true status as employees, thus denying these workers the basic
9 wage-and-hour rights and protections guaranteed to employees by the *Labor Code* and the IWC’s
10 applicable Wage Order.

11 3. The result of Defendants’ misclassification scheme is that Plaintiff and other
12 similarly-situated workers were, and are, routinely denied payment of all earned wages, including:
13 (i) the compensation earned but left unpaid for non-job related work, pursuant to California law’s
14 requirement that employees be paid at least the minimum wage for each hour worked; (ii) the
15 premium wages earned for each day an employee is deprived an uninterrupted, duty-free meal
16 period mandated by California law; (iii) the premium wages earned for each day an employee is
17 deprived an uninterrupted, duty-free rest period mandated by California law; and (iv) failed to
18 reimburse employees expenses incurred for Defendants’ own business operational expenses.
19 Instead, Defendants have taken such wages owed to Plaintiff and other similarly-situated workers
20 and unlawfully converted the funds for Defendants’ own use and benefit, in order to maximize
21 profits and gain an unfair business advantage over their competitors at the expense of Defendants’
22 own employees. By their unlawful misclassification scheme, Defendants also evaded their
23 obligation to provide Workers’ Compensation protection to these employees in an industry where
24 work-related injuries and illnesses are far from uncommon.

25 4. Defendants’ acts and omissions, as described herein, violate provisions of the
26 *Labor Code* including, but not limited to, Sections 201, 202, 204, 226, 226.7, 226.8, 432.5, 512,
27 1197 and 2802; violate the applicable Wage Orders issued by the California Industrial Welfare
28

Commission, including Wage Order 7-2001; and amount to unfair and unlawful business practices prohibited by the California *Business and Professions Code* § 17200, *et seq.*

5. Plaintiff now brings this class action, on behalf of himself and a class of similarly-situated former and current workers who worked for Defendants and were misclassified as independent contractors, but over whom Defendants retain and exercise a level of control such that they are properly deemed employees under California law to recover the unpaid wages owed to them by Defendants, and to collect all applicable statutory penalties for Defendants' myriad violations of the *Labor Code*, including recordkeeping penalties under *Labor Code* § 226 and waiting-time penalties under *Labor Code* § 203.

II.

PARTIES

6. Plaintiff Bradley Falk is a resident of Riverside County, California, and worked for Defendants from November 18, 2019 until his illegal termination on November 27, 2019. Throughout that time, Plaintiff was assigned to, and worked out of, Defendants' facility in Palm Springs, California

7. At all relevant times, Defendant PSA is, and at all times mentioned herein was, a corporation conducting business in the County of Riverside, State of California. At all relevant times, Defendant PSA was the "employer" of Plaintiff within the meaning of all applicable California laws and statutes.

8. At all relevant times, Defendant McCormick was the owner, principal, partner, shareholder and/or Chief Executive Officer of PSA. Plaintiff is informed and believes, and thereby allege, that McCormick, as the highest-ranking officer of PSA, has headed PSA's operations in the State of California during the relevant period. Plaintiff further alleges on information and belief that McCormick is directly and personally responsible for the wage-and-hour policies and practices at issue in this case, in that he created, formulated, directed, implemented, knowingly ratified and/or consented to these unlawful policies and practices.

9. Each business entity of PSA and Doe Defendants 1-25, whether corporate, partnership, joint venture, unincorporated association, public entity, or other business entity of

1 unknown form, and whether named or sued by fictitious name, is, and at all times mentioned
2 herein was, in some manner involved in the ownership and/or operation of Defendants herein.
3 Each of the individual Defendants, whether named or sued by fictitious name, whether acting in an
4 individual capacity or within or without his/their capacity as managerial agent, servant, employee,
5 officer, director, partner, or joint venturer of each of the business entity Defendants
6 aforementioned, in committing the acts or omissions as alleged herein which resulted in damage to
7 Plaintiff, is and at all times mentioned herein was, also in some manner involved in the ownership
8 and/or operation of Defendants, and in doing the things herein alleged was acting with the
9 permission and consent and/or knowledge, authorization or ratification of each of the business
10 entity Defendants mentioned above, unless otherwise stated herein.

11 10. Plaintiff is also informed and believes, and based thereon alleges, that at all times
12 mentioned herein to this Complaint each Defendant has been an employer and/or joint employer of
13 Plaintiff, and that each Defendant has been the integrated enterprise, alter ego, partner, joint
14 venturer, joint employer, successor-in-interest, merged entity, acquiring entity, parent corporation,
15 subsidiary, successor of the liability, insurer and/or guarantor of each other Defendant, and/or the
16 agent and/or employee of each other Defendant and, in doing the things hereinafter alleged, was
17 acting within the course and scope of such agency and/or employment with the permission and
18 consent and/or knowledge, authorization, or ratification of each of the other defendants mentioned
19 above, unless otherwise stated herein.

20 11. At all times herein mentioned, PSA, and Does 1-25 and each Doe Defendant were
21 agents, employees and/or partners of the remaining Defendants, including the Doe Defendants,
22 and, in doing the things herein alleged, were acting within the scope of such agency, employment,
23 and/or partnership with the permission, authority, consent of, and/or ratification by its
24 codefendants.

25 12. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
26 Does 1-25, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will
27 amend this Complaint to allege the true names and capacities of said Defendants when the same
28 has been ascertained. Each of the fictitiously named Defendants is responsible in some manner for

1 the acts complained of herein. Unless otherwise stated, all references to named Defendants shall
2 include the Doe Defendants as well.

3 13. Plaintiff further alleges that Defendants directly or indirectly controlled or affected
4 the working conditions, wages, working, hours, and conditions of employment of Plaintiff and the
5 other Class Members so as to make each of said Defendant employers liable under the statutory
6 provisions set forth herein.

7 III.

8 CLASS ACTION ALLEGATIONS

9 14. Plaintiff bring this action on his own behalf and on behalf of all other members of
10 the general public similarly situated, and, thus, seeks class certification under *Code of Civil*
11 *Procedure* § 382.

12 15. The proposed class is defined as follows:

13 All persons who performed work for any of the Defendants who were classified as
14 independent contractors instead of employee within the State of California at any
15 time during the period from four (4) years preceding the filing of this Complaint to
16 final judgment and who reside in California.

17 16. Plaintiff reserves the right to establish subclasses as appropriate.

18 17. The Class Members are so numerous that joinder of each individual member would
19 be impracticable, and the disposition of their claims in a class action, rather than in numerous
20 individual actions, will benefit the parties, the Court, and the interests of justice. Plaintiff is
21 informed and believes, and based thereon alleges, that there are in excess of 150 members in the
22 proposed class.

23 18. The Class Members are readily ascertainable by their job positions and duties, by
24 their classification as independent contractors by Defendants, and from the books and records
25 maintained by the Defendants in their regular course of business.

26 19. There is a well-defined community of interest amongst the Class Members, as all of
27 these individuals have resided and worked in California and have been similarly subjected to
28 unlawful policies and/or practices that misclassified them as independent contractors, thereby

1 depriving them of the protections afforded employees by California's employment laws. Through
2 such misclassification, Class Members, including Plaintiff, have been similarly deprived of the
3 legally-mandated minimum-wage compensation for all hours worked, mandated meal and rest
4 periods, the additional hour of compensation owing to them for missed meal and rest periods,
5 accurate, itemized wage statements reflecting all earned wages, and timely payment of all earned
6 wages.

7 20. Common questions of law and fact that affect the class predominate over questions
8 that affect only individual Class Members, including, among other things, (a) whether Defendants
9 maintained a policy and/or practice whereby Class Members were improperly classified as
10 independent contractors as opposed to employees; (b) whether Defendants maintained a policy
11 and/or practice of failing to pay Class Members the legally-mandated minimum-wage for all hours
12 worked; (c) whether Defendants maintained a policy and/or practice of failing to pay Class
13 Members overtime premium wages for all overtime hours worked; (d) whether Defendants
14 maintained a policy and/or practice of failing to provide Class Members the meal periods to which
15 they were entitled under California law; (e) whether Defendants maintained a policy and/or
16 practice of failing to allow Class Members the rest periods to which they were entitled under
17 California law; (f) whether Defendants maintained a policy and/or practice of failing to pay Class
18 Members the additional hour of compensation owed to them under *Labor Code* § 226.7 for all
19 shifts during which a mandated meal period was not provided; (g) whether Defendants maintained
20 a policy and/or practice of failing to pay Class Members the additional hour of compensation
21 owed to them under *Labor Code* § 226.7 for all shifts during which they were deprived a
22 mandated rest period; (h) whether Defendants maintained a policy and/or practice of failing to pay
23 all wages owed to Class Members within the time limits prescribed by *Labor Code* §§ 201, 202
24 and/or 204; (i) whether Defendants maintained a policy and/or practice of failing to maintain and
25 furnish accurate, itemized wage statements to Class Members; and (j) whether Defendants
26 maintained a policy and/or practice whereby Class Members are improperly required to pay for
27 expenses and losses incurred in discharging their duties.

1 21. Plaintiff's claims are typical of the claims of the Class Members because (a)
2 Plaintiff's jobs, positions and duties are similar, if not identical to, the duties and activities of other
3 Class Members; (b) Plaintiff was similarly misclassified as an independent contractor as were
4 other Class Members; (c) Plaintiff was similarly denied payment of minimum-wage compensation
5 as were other Class Members; (d) Plaintiff was similarly denied payment of overtime wage
6 compensation as were other Class Members; (e) Plaintiff was denied the same meal-break
7 benefits, including additional compensation for missed meal breaks, as were other Class Members;
8 (f) Plaintiff was denied the same rest-break benefits, including additional compensation for missed
9 rest breaks, as were other Class Members; (g) Plaintiff was not given accurate, itemized wage
10 statements, as required by *Labor Code* § 226, like other Class Members; (h) Plaintiff was not paid
11 all his earned wages within the time limits prescribed by the *Labor Code*, like other Class
12 Members; (i) Plaintiff was similarly subjected to the requirement that he pay for expenses and
13 losses incurred in discharging his duties for Defendants as were other Class Members; and (j)
14 Plaintiff was denied the foregoing rights and benefits provided under California's employment
15 laws and regulations in the same manner that such rights and benefits were denied to other Class
16 Members.

17 22. It is common knowledge that employees face great risks in pursuing separate
18 actions, including retaliation. For these and other reasons, a class action is superior to other
19 methods for the fair and efficient adjudication of this controversy. Individual actions are
20 expensive in terms of attorneys' fees and costs relative to limited amounts of possible recovery.
21 The great majority of Class Members are unlikely to find attorneys to represent them and they
22 would find it difficult if not impossible to afford to pay hourly fees to attorneys for such actions.

23 23. Moreover, administrative proceedings are by no means an adequate or appropriate
24 remedy against Defendants' violations. Among other limitations in administrative proceedings,
25 for example, there is limited discovery permitted in California Labor Commission cases;
26 employers are typically represented by attorneys while plaintiff-employees usually are not, and are
27 not afforded counsel by the Labor Commissioner; there is limited relief available (i.e., no
28 restitution under *Business & Professions Code* §17200, *et seq.*); no attorneys' fees are recoverable

1 for the administrative hearing, whereas in a civil action such as this one there is an attorneys' fees
2 statute in favor of the plaintiffs; and any decision made by the Labor Commission is subject to
3 trial de novo in the courts, and thus would be very wasteful of time, costs, and other resources.

4 24. Plaintiff can adequately represent the interests of the Class Members because, like
5 them, Plaintiff was employed by Defendants and Plaintiff suffered the same or similar injuries as a
6 result of Defendants' systemic failures to comply with the applicable California employment laws
7 and regulations governing classification of workers as employees as opposed to independent
8 contractors; minimum wage; overtime; meal- and rest-break benefits; requirements that employers
9 indemnify employees for expenses and losses incurred in discharging their duties; timely payment
10 of wages; and recordkeeping requirements. Furthermore, Plaintiff has retained counsel who are
11 experienced in prosecuting wage-and-hour class actions. Plaintiff and his counsel are committed
12 to vigorously prosecuting this action on behalf of the class and have the financial resources
13 necessary to do so.

14 IV.

15 **ALLEGATIONS COMMON TO CLASS CLAIMS CAUSES OF ACTION NOS. ONE** 16 **THROUGH TEN AND FOURTEEN**

17 25. PSA organizes and holds classic and exotic car auctions and car shows in Palm
18 Springs, California. In order to run these auctions, PSA hires people to work these multi-day
19 auctions. Job duties and responsibilities include, but are not limited to, moving the cars to be
20 auctioned around the lot, setting up and labeling the cars being auctioned, running documents
21 while the auction is taking place, cleaning, washing, and maintaining the cars being sold, and
22 crowd control. When PSA is not holding an auction, potential customers can still purchase classic
23 cars in PSA's showroom.

24 26. Defendants classified Plaintiff and other Class Members as independent
25 contractors. Defendants significantly control the details of the work performed by Plaintiff and
26 Class Members, as discussed herein and they should have been classified as employees.

27 27. No special skills were required to perform work for Defendants.
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1 28. Defendants provided Plaintiff and other Class Members all the tools and materials
2 necessary to perform their job duties and responsibilities.

3 29. Defendants control the assignment and dissemination of job duties and
4 responsibilities to Plaintiff and other Class Members. Defendants directed Plaintiff's and other
5 Class Members' work. Plaintiff and other Class Members are subject to discipline if they fail to
6 perform their job duties and responsibilities in accordance to the standards established by
7 Defendants.

8 30. Defendants unilaterally set Plaintiff's and other Class Members' work pay rates,
9 which are not negotiable as would be expected in a true independent contractor relationship.

10 31. Plaintiff and other Class Members are not engaged in a separate business or
11 profession, but instead work for Defendant.

12 32. The days and hours worked by Plaintiff and other Class Members are controlled by
13 Defendants.

14 33. Plaintiff and other Class Members who work for Defendants are integrated into the
15 Defendants' regular business operations and are essential to Defendants' day-to-day operations.

16 34. Defendants impose various policies, instructions, work rules and regulations on
17 Plaintiff and other Class Members, disobedience of which would result in worker discipline,
18 including reprimands, warnings, suspensions, and up to immediate termination. Defendants
19 maintain the right to terminate and can easily terminate Plaintiff and other Class Members at any
20 time for seemingly insignificant grounds.

21 35. In reality, Defendants control the means, manner and methods by which Plaintiff
22 and other Class Members perform their work for Defendants. Nevertheless, Defendants have
23 willfully misclassified Plaintiff and other Class Members as independent contractors, in order to
24 minimize costs and unduly maximize profits at the expense of their primary workforce.

25 36. Through their unlawful misclassification scheme, Defendants avoid the costs of
26 providing workers compensation/occupational accident insurance to Plaintiff and other Class
27 Members, denying such employees much needed protection in the event of work-related injuries
28 or illnesses.

37. Defendants' unlawful conduct of misclassifying Plaintiff and other Class Members also allows Defendants to deprive Plaintiff and other Class Members of fundamental employment rights, such as the right to minimum wages, the right to mandated meal breaks, the right to mandated rest breaks, the right to premium wages for missed meal and rest breaks, the right to accurate itemized wage statements, the right to the prompt payment of full wages within time limits designated by law, and the right to workers compensation protection, guaranteed to employees under various provisions of the *Labor Code* and Wage Order 7-2001.

38. In fact, Defendants did not implement and have no policy or practice at all for providing meal and rest breaks to Plaintiff and other Class Members, as required by law. Accordingly, Defendants did not implement, nor have in place, any policy or practice at all of paying premium wages to Plaintiff and other Class Members for missed meal or rest breaks. Defendants uniformly engaged in these violations of law against Class Members for the entire duration of the applicable class period.

V.

**ALLEGATIONS COMMON TO PLAINTIFF FALK’S CAUSES OF ACTION NOS.
ELEVEN THROUGH THIRTEEN**

39. Plaintiff Falk is sixty-two (62) years old and has over thirty-five (35) years of experience in the auto repair industry

40. In July 2019, Plaintiff Falk packed up all of his belongings and moved from Michigan to Palm Springs, California, to be closer to his daughter. Unsurprisingly, there were few employment opportunities for a sixty-two (62) year old who did not have any local professional contacts.

41. In late October 2019, Plaintiff Falk walked into PSA and gave McCormick a copy of his resume. Approximately one (1) week later, McCormick interviewed Plaintiff Falk and offered him a job the same day. McCormick told Plaintiff Falk that he was hired as a salesman because the current salesman was on probation for stealing from the company. Additionally, McCormick told Plaintiff Falk that he preferred hiring salespersons without any experience because McCormick preferred to train his salespersons.

1 42. On October 30, 2019, McCormick sent Plaintiff Falk an email which stated that
2 Plaintiff Falk's first day would be November 14, 2019. The email also set forth Plaintiff Falk's
3 job duties and reporting hours through November 30, 2019. Plaintiff Falk's primary job duties
4 from November 14, 2019 through November 30, 2019 were: automotive maintenance on shuttle
5 vans and golf carts, setting up PSA's auction at the Palm Springs Convention Center, moving cars
6 that were up for auction from PSA's showroom to the Convention Center, and breaking down the
7 event at the completion of the auction.

8 43. Also on October 30, 2019, Plaintiff Falk sent McCormick an email confirming that
9 he would not have any problem with the reporting hours or job duties that McCormick stated in
10 his October 30, 2019 email and that he was "looking forward for this opportunity to be long and
11 prosperous."

12 44. On October 31, 2019, Plaintiff Falk asked McCormick what his reporting hours and
13 job duties would be after the auction. McCormick assured Plaintiff Falk that the two of them
14 would revisit Plaintiff Falk's reporting hours and job duties going forward as PSA's salesman
15 after the action was over. The representations made by McCormick on October 31, 2019, were
16 completely false.

17 45. Notwithstanding the fact that Plaintiff Falk was hired as a salesman, at no point did
18 McCormick provide any training to Plaintiff Falk on how to sell classic cars. From November 14,
19 2019 through November 27, 2019, Plaintiff Falk completed every task that McCormick assigned
20 to him. McCormick never criticized Plaintiff Falk's work performance or gave him any negative
21 feedback. In fact, Plaintiff Falk frequently asked McCormick for more work because Plaintiff
22 Falk was finishing his assigned tasks faster than expected.

23 46. On November 27, 2019, Plaintiff Falk reported to work at 9:00 a.m. Shortly
24 thereafter, Jason McCormick, Manager of PSA and McCormick's son, gave Plaintiff Falk a
25 termination letter and said, "this if from my dad." Plaintiff Falk's termination letter is direct
26 evidence of McCormick's discriminatory *animus*. The termination stated:

27 "I realized I was expecting too much of your capabilities at the event. I am a very
28 active 72 year old that goes at 100 mph and thinks everyone else can do the same.

1 You are a good mechanic who works things out to make it work. I am really
2 looking for an assistant to work close with me during the event and **must look for**
3 **a much younger person.**” (Emphasis added).

4 47. McCormick’s stated reason that he was expecting too much of Plaintiff Falk’s
5 capabilities at the event is revisionist history. As was stated above, Plaintiff Falk was never
6 criticized or reprimanded for failing to complete any of the tasks he was assigned. The only
7 reason Plaintiff Falk was terminated was because McCormick wanted to hire a “much younger
8 person.” McCormick admitted, in writing, that he terminated Plaintiff Falk because of his age.

9 48. As a result of Defendants’ unlawful conduct as set forth in this Complaint and
10 specifically causes of action nos. eleven through thirteen, Plaintiff has suffered and continues to
11 suffer emotional distress, economic damages, emotional trauma, grief, anguish, depression,
12 embarrassment, and other damages which will be proved at the time of trial.

13 49. Prior to the institution of this lawsuit, Plaintiff filed complaints against each named
14 Defendant with the California Department of Fair Employment and Housing (“DFEH”), pursuant
15 to *Government Code* § 12900, *et seq.*, alleging that the acts described in this Complaint violated
16 the California Fair Employment and Housing Act, *Government Code* § 12940, *et seq.* (“FEHA”).
17 On December 27, 2019, the DFEH issued a “right to sue” letter, a true and correct copy of which
18 is attached hereto as **Exhibit C**. All conditions precedent to the institution of this lawsuit have
19 been fulfilled. This action is filed within one year of the date that the DFEH issued its right to sue
20 letter.

21 VI.

22 FIRST CAUSE OF ACTION

23 **FAILURE TO PAY MINIMUM WAGES (*LABOR CODE* §§ 1194, 1194.2 & 1197)**

24 **(Against Defendants PSA and/or Does 1-25)**

25 50. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
26 Complaint as if fully alleged herein.

1 51. *Labor Code* §§ 1182.12 and 1197, and Section 4 of IWC Wage Order 7-2001
2 required Defendants to pay Plaintiff and the other Class Members at or above the state minimum
3 wage for every hour Defendants suffered or permitted him to work.

4 52. *Labor Code* § 1194(a) provides, in relevant part, “notwithstanding any agreement
5 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
6 overtime compensation applicable to the employee is entitled to recover in a civil action the
7 unpaid balance of the full amount of this minimum wage or overtime compensation, including
8 interest thereon, reasonable attorney’s fees, and costs of suit.” Moreover, pursuant to *Labor Code*
9 § 1194.2, in any action to recover minimum wage, “an employee shall be entitled to recover
10 liquidated damages in an amount equal to the wages unlawfully unpaid and the interest thereon.”

11 53. *Labor Code* § 1197 further provides that, “the minimum wage for employees fixed
12 by the [Industrial Welfare Commission] is the minimum wage to be paid to employees, and the
13 payment of a less wage than the minimum sole fixed is unlawful.”

14 54. At all times during his employment with Defendants, Plaintiff’s and the other Class
15 Members’ work duties did not qualify them as exempt from any of California’s wage and hour
16 requirements, including the minimum wage requirement.

17 55. During the relevant time period, Defendants failed to pay minimum wages to
18 Plaintiff and the other Class Members as required, pursuant to *Labor Code* §§ 1194, 1197, and
19 1197.1.

20 56. As a direct and proximate result of Defendants PSA and/or Does 1-25’s refusal to
21 pay minimum wages for the hours Plaintiff and the other Class Members worked pursuant to
22 *Labor Code* § 1194(a), Plaintiff and the other Class Members are entitled to recover minimum
23 wages for all hours they were not paid any wages, including interest thereon, reasonable attorneys’
24 fees, and costs, pursuant to *Labor Code* §§ 218.6 and 1194. In addition thereto, pursuant to *Labor*
25 *Code* § 1194.2, Plaintiff and the other Class Members are entitled to recover “liquidated damages
26 in an amount equal to the wages unlawfully unpaid and interest thereon.”
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57. Pursuant to *Labor Code* § 1197.1, Plaintiff and the other Class Members are entitled to recover a penalty of \$100 for the initial failure to timely pay each employee minimum wages, and \$250 for each subsequent failure to pay each employee minimum wages.

VII.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES (*LABOR CODE* §§ 510 & 1198)

(Against Defendants PSA and/or Does 1-25)

58. Plaintiff realleges and incorporates by reference all preceding paragraphs of this Complaint as though fully set forth herein.

59. It is unlawful under California law for an employer to require, suffer, or permit an employee to work in excess of eight (8) hours per workday or forty (40) hours per workweek without paying premium wages under *Labor Code* § 510 and IWC Wage Order No. 7-2001 Section 3.

60. Pursuant to *Labor Code* § 510, “any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek...shall be compensated at the rate of no less than one-and-one half times the regular rate of pay for the employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee....”

61. Pursuant to *Labor Code* § 1194, “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.”

62. Pursuant to IWC Wage Order No 7-2001 Section 3, “[e]mployment beyond eight (8) hours in any workday is permissible provided the employee is compensated for such overtime at not less than: (a) One and one-half (1 1/2) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday...; and (b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday...”

63. During the relevant time period, Plaintiff and the other Class Members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

64. Defendants PSA and/or Does 1-25 knowingly and willfully failed to properly compensate Plaintiff and the other Class Members for all overtime hours worked under California law.

65. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and the other Class Members have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief from Defendants' violations of the *Labor Code*.

66. The violations of the *Labor Code* by Defendants PSA and/or Does 1-25 entitle Plaintiff and the other Class Members to recover unpaid overtime wages, interest pursuant to *Labor Code* §§ 218.6 and 1194, and costs and attorneys' fees pursuant to *Labor Code* § 1194.

VIII.

THIRD CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES (LABOR CODE § 204)

(Against Defendants PSA and/or Does 1-25)

67. Plaintiff realleges and incorporates by reference all preceding paragraphs of this Complaint as though fully alleged herein.

68. The *Labor Code* requires that employers establish specified regular pay days on which employees will be paid their earned wages. *Labor Code* § 204 requires that for the semi-monthly payment of wages “all wages...earned by any person in any employment are due and payable twice during each calendar month...”

69. *Labor Code* § 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

70. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other Class Members all wages due to them within any time period permissible under *Labor Code* § 204.

71. Plaintiff and the other Class Members are entitled to recover all remedies available for violations of *Labor Code* § 204.

72. The violations of the *Labor Code* by Defendants PSA and/or Does 1-25 entitle Plaintiff and the other Class Members to recover unpaid wages and interest pursuant to *Labor Code* § 218.6, costs and attorneys' fees pursuant to *Labor Code* § 218.5, and penalties pursuant to *Labor Code* § 210.

IX.

FOURTH CAUSE OF ACTION

FAILURE TO FURNISH ACCURATE WAGE STATEMENTS (*LABOR CODE* § 226(a))

(Against Defendants PSA and/or Does 1-25)

73. Plaintiff realleges and incorporates by reference all preceding paragraphs of this Complaint as though fully alleged herein.

74. *Labor Code* § 226(a) requires Defendants PSA and/or Does 1-25 at the time of each payment of wages, to furnish each employee with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or their social security number, except that by January 1, 2008, only the last four digits of his or their social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” *Labor Code* § 226(e) provides that if an employer knowingly and intentionally fails to furnish an accurate itemized wage statement, the employee is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial violation and one hundred (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

75. Defendants PSA and/or Does 1-25 have knowingly and intentionally failed to furnish Plaintiff and the other Class Members with complete and accurate wage statements. The deficiencies include, but are not limited to, the failure to include total hours worked, gross wages, all deductions, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, net wages, and inclusive dates of the period for which the employee is paid.

76. By failing to keep adequate records, as required by *Labor Code* § 226, Defendants have injured Plaintiff and other Class Members, and made it confusing and difficult to calculate the unpaid wages earned and expenditures not indemnified by Defendants (including wages, interest, and penalties thereon) due to Plaintiff and other Class Members.

77. Plaintiff seeks to recover, on behalf of himself and other Class Members, the statutory penalties provided by *Labor Code* § 226(e) for the wage statement violations committed by Defendants.

X.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(LABOR CODE §§ 226.7 and 512(a))

(Against Defendants PSA and/or Does 1-25)

78. Plaintiff realleges and incorporates by reference all preceding paragraphs of this Complaint as though fully alleged herein.

79. As alleged herein, Defendants have maintained a policy and/or practice whereby Class Members, including Plaintiff, were and are misclassified as independent contractors. As such, Defendants have systematically failed and/or refused to provide Class Members, including Plaintiff, with an uninterrupted, off-duty meal break of at least thirty (30) consecutive minutes in duration for all shifts in excess of five (5) hours, as guaranteed to them as employees under *Labor Code* §§ 226.7 and 512, and Wage Order 7-2001.

80. *Labor Code* § 226.7(a) prohibits an employer from requiring an employee to work during any meal period mandated by an applicable Industrial Wage Order. *Labor Code* § 512 and

1 IWC Wage Order 7-2001 Section 11(A) prohibit employers from employing a worker for more
2 than five (5) hours without a meal period of at least thirty (30) minutes. *Labor Code* § 512
3 prohibits employers from employing a worker for more than ten (10) hours without a second meal
4 period of at least thirty (30) minutes. Under both *Labor Code* § 226.7(b) and IWC Wage Order 7-
5 2001 Section 11(B), if an employer fails to provide an employee a meal period as required, the
6 employer must pay the employee one (1) hour of pay at the employee's regular rate of
7 compensation for each workday that a meal period is not provided as required.

8 81. *Labor Code* § 512 provides that, “An employer may not employ an employee for a
9 work period of more than five hours per day without providing the employee with a meal period of
10 not less than 30 minutes.”

11 82. *Labor Code* § 512 further states, “An employer may not employ an employee for a
12 work period of more than 10 hours per day without providing the employee with a second meal
13 period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours,
14 the second meal period may be waived by mutual consent of the employer and the employee only
15 if the first meal period was not waived.”

16 83. *Labor Code* § 226.7 provides, “If an employer fails to provide an employee a meal
17 or rest or recovery period in accordance with a state law, including but not limited to, an
18 applicable statute or applicable regulation, standard, or order of the Industrial Welfare
19 Commission...the employer shall pay the employee one additional hour of pay at the employee’s
20 regular rate of compensation for each workday that the meal or rest or recovery period is not
21 provided.”

22 84. At all relevant times herein, Defendants have failed and/or refused to provide Class
23 Members, including Plaintiff, with the additional compensation for missed meal periods required
24 by *Labor Code* § 226.7 and Wage Order 7-2001.

25 85. Defendants PSA and/or Does 1-25 have committed the acts alleged herein
26 knowingly and willfully.
27
28

86. Based on Defendants' conduct, as alleged herein, Defendants are liable to the Class Members, including Plaintiff, for their unpaid premium wages for missed meal periods, pursuant to *Labor Code* § 226.7 and Wage Order 7-2001.

87. Plaintiff and the other Class Members are also entitled to recover costs and attorneys' fees pursuant to *Labor Code* § 218.5 and/or pursuant to *Code of Civil Procedure* § 1021.5, because the private enforcement of rights sought to be enforced in this cause of action is necessary as no public agency has pursued enforcement, and such attorneys' fees should not in the interest of justice be paid out of any recovery. Pursuant to *Labor Code* § 218.6, Plaintiff and the other Class Members are entitled to interest which accrues from the date that the wages were due and payable, yet unpaid.

XI.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST BREAKS (*LABOR CODE* § 226.7)

(Against Defendants PSA and/or Does 1-25)

88. Plaintiff realleges and incorporates by reference all preceding paragraphs of this Complaint as though fully alleged herein.

89. As alleged herein, Defendants have maintained a policy and/or practice whereby Class Members, including Plaintiff, were and are misclassified as independent contractors. As such, Defendants have systematically failed and/or refused to authorize or permit Class Members, including Plaintiff, to take an uninterrupted 10-minute rest break for every 4 hours worked or major fraction thereof, as guaranteed to them as employees under *Labor Code* § 226.7 and Wage Order 7-2001.

90. Wage Order 7-2001, Section 12, requires an employer to pay an employee an additional hour of compensation for every shift in which said employee was not authorized or permitted to take a mandated rest break. *Labor Code* § 226.7, subdivision (b), likewise requires an employer to pay an employee an additional hour of compensation for every shift that a rest period mandated by the California Wage Orders is not provided.

91. At all relevant times herein, Defendants have failed and/or refused to provide Class Members, including Plaintiff, with the additional compensation for missed rest periods required by *Labor Code* § 226.7 and *Wage Order* 7-2001.

92. Defendants PSA and/or Does 1-25 have committed the acts alleged herein knowingly and willfully.

93. Based on Defendants' conduct, as alleged herein, Defendants are liable to the Class Members, including Plaintiff, for their unpaid premium wages for missed rest periods, pursuant to *Labor Code* § 226.7 and Wage Order 7-2001.

94. Plaintiff and the other Class Members are also entitled to recover attorneys' fees and costs pursuant to *Labor Code* § 218.5 and/or pursuant to *Code of Civil Procedure* § 1021.5 because the private enforcement of rights sought to be enforced in this cause of action is necessary as no public agency has pursued enforcement, and such attorneys' fees should not in the interest of justice be paid out of any recovery. Pursuant to *Labor Code* § 218.6, Plaintiff and the other Class Members are also entitled to interest which accrues from the date that the wages were due and payable, yet unpaid.

XII.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES (*LABOR CODE* § 2802)

(Against Defendants PSA and/or Does 1-25)

95. Plaintiff realleges and incorporates by reference all preceding paragraphs of this Complaint as if fully alleged herein.

96. Pursuant to *Labor Code* § 2802(a), “[a]n employer shall indemnify his or their employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or their duties, or his or their obedience to the directions of the employer...” The purpose of this statute is to prevent employers from passing their operating expenses on to their employees. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 562.

97. Plaintiff and the other Class Members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants.

98. Defendants have intentionally and willfully failed to reimburse Plaintiff and the other Class Members for all necessary business-related expenses and costs.

99. Plaintiff and the other Class Members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

XIII.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE TO A DISCHARGED EMPLOYEE AND

WAITING TIME PENALTIES (*LABOR CODE* §§ 201, 202 & 203)

(Against Defendants PSA and/or Does 1-25)

100. Plaintiff realleges and incorporates by reference all preceding paragraphs of this Complaint as though fully alleged herein.

101. Pursuant to *Labor Code* § 201, on the date of termination, “wages earned and unpaid at the time of discharge [were] due and payable immediately.”

102. Pursuant to *Labor Code* § 202, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

103. Plaintiff and many of the proposed Class Members are no longer working for Defendants. These former employees were either discharged, quit, or otherwise terminated their employment with Defendants.

104. Defendants' failures to pay Plaintiff and other Class Members who are no longer working for Defendants all wages owing to these former employees, as alleged above, were willful.

105. Plaintiff and the other Class Members no longer working for Defendants are therefore entitled to penalties against Defendants, in an amount to be determined at trial, pursuant

1 to *Labor Code* § 203, which provides that an employee's wages shall continue as a penalty until
2 paid, for a period of up to thirty (30) days from the time they were due.

3 106. The violations of *Labor Code* §§ 201, 202 and 203 by Defendants PSA and/or Does
4 1-25 also entitles Plaintiff and the other Class Members to costs and attorneys' fees pursuant to
5 *Labor Code* § 218.5, and to interest pursuant to *Labor Code* § 218.6.

6 **XIV.**

7 **NINTH CAUSE OF ACTION**

8 **UNFAIR COMPETITION IN VIOLATION OF**

9 ***BUSINESS AND PROFESSIONS CODE § 17200, et seq.***

10 **(Against Defendants PSA and/or Does 1-25)**

11 107. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
12 Complaint as though fully alleged herein.

13 108. California has an important public policy of protecting the welfare of employees,
14 and thus provides for necessary meal and rest periods and that statutorily guaranteed wages be
15 paid for all hours worked and for missed meal and rest periods. California also prohibits
16 deductions to wages unless authorized by law. *See Labor Code* §§ 221, 224, 226.7, 512 & 1197.
17 Defendants' willful misclassification scheme, through which Plaintiff and other Class Members
18 are denied mandated meal and rest periods, premium wages for missed meal and rest periods, and
19 the legally-mandated minimum wages for all hours worked, and are subjected to improper
20 deductions to wages not authorized by law, has been, and continues to be, unfair, unlawful, and
21 harmful to Plaintiff, the proposed Class Members, and the general public. Plaintiff seeks to
22 enforce important rights affecting the public interest within the meaning of *Code of Civil*
23 *Procedure* § 1021.5.

24 109. A violation of *Business & Professions Code* § 17200, *et seq.* may be predicated on
25 the violation of any state or federal law. Defendants' activities, as alleged herein, are violations of
26 California law, and constitute unlawful business acts and practices in violation of *Business &*
27 *Professions Code* § 17200, *et seq.*

1 110. Plaintiff and the other Class Members are low wage workers dependent on
2 Defendants for their livelihood, and do not have the same bargaining advantage as their
3 employers. Defendants' misclassification of Plaintiff and the other Class Members as independent
4 contractors, when these individuals are truly employees subject to strict control by Defendants, is
5 unlawful and unfair. By labeling Plaintiff and other Class Members as independent contractors,
6 Defendants are able to avoid their obligations to abide by the minimum employee-protection
7 thresholds set by the State of California, including provisions regarding mandated meal and rest
8 periods, earned premium wages for missed meal and rest periods, guaranteed minimum wage
9 compensation for all hours worked, prohibitions against improper deductions from employees'
10 pay for costs arising from Defendants' own business activities, and the guarantees of employer-
11 provided workers compensation insurance to protect against work-related injuries and illnesses.
12 Throughout the time relevant to this action, Defendants, as described herein, have failed and/or
13 refused to abide by the minimum-employee protections that have long been set forth in California
14 law.

15 111. Defendants' misclassification scheme allows Defendants to strip Plaintiff and other
16 Class Members of their fundamental employment rights, such as the rights to minimum wage,
17 mandated meal and rest periods, premium wages for missed meal and rest periods, itemized wage
18 statements, and the prompt payment of full wages within time limits set by law, as provided under
19 various provisions of the *Labor Code* and Wage Order 7-2001. Defendants also willfully deprive
20 Plaintiff and Class Members of the protections afforded to them under California Workers
21 Compensation laws, denying said individual the basic medical and financial assistance guaranteed
22 to all employees in the event of work-related injuries and/or sicknesses that may occur while
23 working for Defendants.

24 112. With their unlawful scheme, Defendants are able to unjustly keep and appropriate
25 for themselves significant amounts of money that otherwise should have been paid to Class
26 Members as wages. Defendants are also able to illegally pass on business operational costs to their
27 employees, thereby reducing wages due, in violation of *Labor Code* § 2802. Defendants' unfair
28 business practices have reaped undue benefits and illegal profits, and unjustly enriched

1 Defendants, at the expense of Plaintiff, other Class Members, and the public. Plaintiff and other
2 Class Members have been personally injured by Defendants' unlawful business acts and practices,
3 as alleged herein, including but not necessarily limited to the loss of money or property.

4 113. Pursuant to *Business & Professions Code* § 17200, *et seq.*, Class Members
5 currently working for Defendants, are entitled to preliminary and permanent injunctive relief
6 enjoining Defendants from continuing to commit their illegal acts, and for an accounting for and
7 restitution of the monies unlawfully withheld and retained by Defendants. Plaintiff and other Class
8 Members are also entitled to disgorgement of illegally acquired profits by Defendants during the
9 class period. Plaintiff and other Class Members are also entitled to an award of attorneys' fees and
10 costs pursuant to the common fund doctrine, *Code of Civil Procedure* § 1021.5 and other
11 applicable laws.

12 **XV.**

13 **TENTH CAUSE OF ACTION**

14 **VIOLATION OF *LABOR CODE* § 558 FOR CAUSING**

15 **VIOLATION OF *LABOR CODE* § 510**

16 **(Against Defendants PSA, Keith McCormick and/or Does 1-25)**

17 114. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
18 Complaint as though fully alleged herein.

19 115. As alleged herein, Defendants have maintained a policy and/or practice whereby
20 Class Members, including Plaintiff, were and are misclassified as independent contractors.
21 Plaintiff's and the other Class Members' work duties did not qualify them as exempt from
22 overtime wages.

23 116. Pursuant to *Labor Code* § 558(a), "any employer or other person acting on behalf
24 of an employer who violates, or causes to be violated, a section of this chapter . . . shall be subject
25 to a civil penalty . . ."

26 117. As an owner, principal, partner, shareholder and/or Chief Executive Officer of
27 PSA, McCormick had oversight and controlled how Plaintiff and the other Class Members were
28 paid or not paid wages for the hours they worked.

118. Pursuant to *Labor Code* §§ 558(a)(1) and 558 (a)(2), employers “or other persons” who violate any *Labor Code* provision regulating hours and days of work are subject to civil penalties “in addition to an amount sufficient to recover unpaid wages.”

119. Pursuant to *Labor Code* § 510, “any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

120. Defendants PSA, McCormick, and/or Does 1-25 violated and caused the violation of *Labor Code* § 510 and the non-payment of minimum wages and/or overtime wages earned by Plaintiff and the other Class Members.

121. Defendants PSA, McCormick, and/or Does 1-25 failed to properly compensate Plaintiff and the other Class Members for all hours, minimum wage for all hours worked and/or overtime hours worked, notwithstanding the facts that they suffered or permitted Plaintiff and the other Class Members to work in excess of eight (8) hours in one workday and in excess of forty (40) hours in one workweek.

122. The violation of *Labor Code* § 558 entitles Plaintiff and the other Class Members to recover unpaid wages and civil penalties pursuant to *Labor Code* §§ 558(a) and 558(b).

XVI.

ELEVENTH CAUSE OF ACTION

AGE DISCRIMINATION IN VIOLATION OF FEHA

(GOVERNMENT CODE § 12940, *et seq.*)

(Only By Plaintiff Bradley Falk Against Defendants PSA and/or Does 1-25)

123. Plaintiff realleges and incorporates by reference all preceding paragraphs of this Complaint as though fully set forth herein.

1 124. Defendants PSA and/or Does 1-25 are subject to the laws of the State of California
2 and are entities subject to suit under FEHA for age discrimination under *Government Code* §
3 12940(a), because they regularly employ five (5) or more persons in the State of California.

4 125. At all relevant times, Plaintiff was an employee of PSA who was over forty (40)
5 years old.

6 126. Defendants PSA and/or DOES 1-25 discriminated against Plaintiff because of his
7 age by engaging in conduct and acts which included, but were not limited to: terminating
8 Plaintiff's employment.

9 127. Plaintiff was subjected to a pattern of disability discrimination by PSA. The
10 pattern and course of disability discrimination to which Plaintiff was subjected violated FEHA.
11 By reason of the foregoing, Defendants have committed unlawful employment practices which
12 violate FEHA.

13 128. As a proximate result of the conduct of Defendants PSA and/or Does 1-25, Plaintiff
14 has suffered and will continue to suffer damages in terms of lost wages, lost bonuses, and other
15 compensation benefits, attorneys' fees, costs of suit and other pecuniary loss according to proof.
16 Plaintiff has also suffered and will continue to suffer physical and emotional injuries, including
17 nervousness, humiliation, depression, anguish, embarrassment, discomfort, and anxiety. The
18 amount of Plaintiff's actual damages will be ascertained at trial, but are believed to be in excess of
19 \$250,000.

20 129. Defendants PSA and/or Does 1-25 acted in a despicable, oppressive, and malicious
21 manner with the express intent of injuring or damaging Plaintiff or with conscious disregard of his
22 rights and with the intent to vex, injure, and annoy Plaintiff, such as to constitute oppression, fraud
23 or malice under *Civil Code* § 3294, thereby entitling Plaintiff to punitive and exemplary damages
24 against Defendants in a sum appropriate to punish and make an example of Defendants.

25 130. The acts of oppression, fraud, or malice against Plaintiff were engaged in by
26 employees, managing agents, officers, and directors of Defendants PSA and/or Does 1-25.
27 Defendants PSA and/or Does 1-25 had advance knowledge of the unfitness of employee, agents,
28 officers, and directors, who acted with malice, oppression, or fraud and employed them with a

1 conscious disregard of the rights or safety of Plaintiff, and/or authorized or ratified the wrongful
2 conduct for which an award of punitive damages is sought, and/or was personally guilty of
3 oppression, fraud, or malice. The advance knowledge and conscious disregard, authorization,
4 ratification, or act of oppression, fraud, or malice was committed by or on the part of an officer,
5 director, or managing agent of Defendants PSA and and/or Does 1-25, thereby entitling Plaintiff to
6 punitive and exemplary damages against Defendants PSA and/or Does 1-25 in accordance with
7 *Civil Code* § 3294 in a sum appropriate to punish and make an example of Defendants PSA and/or
8 Does 1-25.

9 131. FEHA provides for an award of reasonable attorneys' fees and costs incurred by the
10 prevailing party in an action brought under its provisions. Plaintiff has employed and will
11 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
12 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
13 award of attorneys' fees and costs under *Government Code* § 12965(b).

14 132. Plaintiff has been generally damaged in an amount within the jurisdictional limits
15 of this Court.

16 **XVII.**

17 **TWELFTH CAUSE OF ACTION**

18 **FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF FEHA**

19 **(GOVERNMENT CODE § 12940, et seq.)**

20 **(Only By Plaintiff Bradley Falk Against Defendants PSA and/or Does 1-25)**

21 133. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
22 Complaint as if fully alleged herein.

23 134. Defendants PSA and/or Does 1-25, are each subject to the laws of the State of
24 California and are entities subject to suit under FEHA for failure to prevent discrimination in that
25 each of these Defendants is an employer who regularly employs five (5) or more persons.

26 135. *Government Code* § 12940(k) makes it an unlawful employment practice for an
27 employer to "fail to take all reasonable steps to prevent discrimination and harassment from
28 occurring." Defendants PSA and/or Does 1-25 violated this provision by failing to appropriately

1 stop discrimination against Plaintiff from occurring when the PSA and/or Does 1-25's
2 management knew that Plaintiff was an employee over forty (40) years old and was protected by
3 FEHA.

4 136. Defendants PSA and/or Does 1-25, violated *Government Code* § 12940(k) by
5 failing to prevent acts of discrimination, which included, but were not limited to, the following:
6 terminating Plaintiff's employment.

7 137. As a result of the foregoing conduct by Defendants PSA and/or Does 1-25, Plaintiff
8 was subjected to discrimination in violation of FEHA as set forth above.

9 138. As a direct and proximate result of the conduct of Defendants and/or Does 1-25,
10 and each of them, Plaintiff has suffered and will continue to suffer damages in terms of lost wages,
11 lost bonuses, lost benefits, and other pecuniary loss according to proof. Plaintiff has also suffered
12 and will continue to suffer physical and emotional injuries, including nervousness, humiliation,
13 depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The
14 amount of Plaintiff's damages will be ascertained at trial, but is believed to be in excess of
15 \$250,000.

16 139. In committing the foregoing acts, Defendants PSA and/or Does 1-25 acted in a
17 despicable, oppressive, and malicious manner with the express intent of injuring or damaging
18 Plaintiff or with conscious disregard of his rights and with the intent to vex, injure, and annoy
19 Plaintiff, such as to constitute oppression, fraud or malice under *Civil Code* § 3294, thereby
20 entitling Plaintiff to punitive and exemplary damages against Defendants in a sum appropriate to
21 punish and make an example of Defendants.

22 140. The acts of oppression, fraud, or malice against Plaintiff were engaged in by
23 employees, managing agents, officers, and directors of Defendants PSA and/or Does 1-25.
24 Defendants PSA and/or Does 1-25 had advance knowledge of the unfitness of employee, agents,
25 officers, and directors, who acted with malice, oppression, or fraud and employed them with a
26 conscious disregard of the rights or safety of Plaintiff, and/or authorized or ratified the wrongful
27 conduct for which an award of punitive damages is sought, and/or was personally guilty of
28 oppression, fraud, or malice. The advance knowledge and conscious disregard, authorization,

1 ratification, or act of oppression, fraud, or malice was committed by or on the part of an officer,
2 director, or managing agent of Defendants PSA and and/or Does 1-25, thereby entitling Plaintiff to
3 punitive and exemplary damages against Defendants PSA and/or Does 1-25 in accordance with
4 *Civil Code* § 3294 in a sum appropriate to punish and make an example of Defendants PSA and/or
5 Does 1-25.

6 141. FEHA provides for an award of reasonable attorneys' fees and costs incurred by the
7 prevailing party in an action brought under its provisions. Plaintiff has employed and will
8 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
9 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
10 award of attorneys' fees and costs under *Government Code* § 12965(b).

11 142. Plaintiff has been generally damaged in an amount within the jurisdictional limits
12 of this Court.

13 **XVIII.**

14 **THIRTEENTH CAUSE OF ACTION**

15 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

16 **(Only By Plaintiff Bradley Falk Against Defendants PSA and/or Does 1-25)**

17 143. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
18 Complaint as if fully alleged herein.

19 144. Plaintiff was terminated by PSA and/or Does 1-25 in part, or in whole, because he
20 was over 40 years old and PSA wanted to replace him with younger employees. As a result,
21 Defendants terminated Plaintiff in violation of the public policy set forth in FEHA – *Government*
22 *Code* § 12940, *et seq.*, which prohibits discrimination against employees based on age.

23 145. As a proximate result of the conduct of Defendants, and each of them, Plaintiff has
24 suffered and will continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and
25 other pecuniary loss according to proof. Plaintiff also has suffered and will continue to suffer
26 anxiety, worry, embarrassment, humiliation, mental anguish, and serious, severe emotional
27 distress. The amount of Plaintiff's damages will be ascertained at trial, but is believed to be in
28 excess of \$250,000.

146. In committing the foregoing acts, Defendants PSA and/or Does 1-25, acted in a despicable, oppressive, and malicious manner with the express intent of injuring or damaging Plaintiff or with conscious disregard of his rights and with the intent to vex, injure, and annoy Plaintiff, such as to constitute oppression, fraud, or malice under *Civil Code* § 3294, thereby entitling Plaintiff to punitive and exemplary damages against Defendants in a sum appropriate to punish and make an example out of the foregoing Defendants.

147. The acts of oppression, fraud, or malice against Plaintiff were engaged in by employees, managing agents, officers, and directors of Defendants PSA and/or Does 1-25. Defendants PSA and/or Does 1-25 had advance knowledge of the unfitness of employee, agents, officers, and directors, who acted with malice, oppression, or fraud and employed them with a conscious disregard of the rights or safety of Plaintiff, and/or authorized or ratified the wrongful conduct for which an award of punitive damages is sought, and/or was personally guilty of oppression, fraud, or malice. The advance knowledge and conscious disregard, authorization, ratification, or act of oppression, fraud, or malice was committed by or on the part of an officer, director, or managing agent of Defendants PSA and and/or Does 1-25, thereby entitling Plaintiff to punitive and exemplary damages against Defendants PSA and/or Does 1-25 in accordance with *Civil Code* § 3294 in a sum appropriate to punish and make an example of Defendants PSA and/or Does 1-25.

148. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this Court.

XIX.

FOURTEENTH CAUSE OF ACTION

CIVIL PENALTIES PURSUANT TO PRIVATE ATTORNEYS' GENERAL ACT

(LABOR CODE § 2698, et seq – PAGA)

(Against Defendants PSA, Keith McCormick, and/or Does 1-25)

149. Plaintiff realleges and incorporates by reference all preceding paragraphs of this Complaint as if fully alleged herein.

1 150. California *Labor Code* § 2698, *et seq.*, the Labor Code Private Attorneys General
2 Act of 2004 (“PAGA”), provides that if an employer violates any provision of the *Labor Code* that
3 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
4 Agency (“LWDA”), an employee who is aggrieved by one or more of said violations may bring a
5 civil action on behalf of him or herself and other current or former employees to recover civil
6 penalties. As to any provision of the *Labor Code* listed in *Labor Code* § 2699.5, *Labor Code* §
7 2699.3(a) provides that such a civil action may be brought after: a) written notice has been
8 provided to the LWDA and the employer of the provisions of the *Labor Code* allegedly violated
9 and b) the LWDA has provided notice to the employee that it does not intend to investigate the
10 alleged violations or the LWDA has not provided notice within sixty-five (65) calendar days that it
11 intends to investigate.

12 151. Pursuant to *Labor Code* § 2699(c), Plaintiff is an “aggrieved employee” who may
13 bring this action for recovery of civil penalties through a civil action on behalf of himself and
14 other current or former employees of Defendants pursuant to the procedures specified in *Labor*
15 *Code* § 2699.3.

16 152. In this cause of action, Plaintiff seeks recovery of civil penalties against Defendants
17 PSA and Keith McCormick for the *Labor Code* violations alleged in the First, Second, Third,
18 Fourth, Fifth, Sixth, Seventh, Eighth, and Tenth Causes of Action, pursuant to *Labor Code* § 2699
19 on a class action basis for *Labor Code* violations against himself as an “aggrieved employee,” and
20 on behalf of other current or former “aggrieved employees” who were employed by Defendants
21 and against whom one or more of the *Labor Code* violations alleged in the foregoing causes of
22 action was committed. *See Labor Code* § 2699(a),(c).

23 153. On or about March 31, 2020, Plaintiff, by and through his attorneys, gave written
24 notice by electronic filing and certified mail to the LWDA and to Defendants that Defendants have
25 violated *Labor Code* § 201, 202, 203, 204, 210, 226(a), 226.7, 226.8, 510, 512, 558, 1194, 1194.2,
26 1197, 1198, 1199, 2750.3, 2800, and 2802, including the facts and theories to support the alleged
27 violations. Attached hereto marked as **Exhibit A** is a true and correct copy of the March 31, 2020
28 (erroneously dated March 31, 2019) notice regarding PSA. Attached hereto marked as **Exhibit B**

1 is a true and correct copy of the March 31, 2020 (erroneously dated March 31, 2019) notice
2 regarding McCormick.

3 154. More than sixty-five (65) calendar days have passed since March 31, 2020.
4 Defendants have not provided any notice to Plaintiff that any of the alleged violations have been
5 cured. Thus, pursuant to *Labor Code* § 2699.3(a)(2)(C), Plaintiff has amended this Complaint to
6 add this Fourteenth Cause of Action under PAGA.

7 155. Defendants know that the individuals working for them are their employees, but
8 they willfully misclassify these individuals as independent contractors. Defendants thus have
9 violated, and continue to violate, *inter alia*, *Labor Code* §§ 226.8 and 432.5. Plaintiff and the
10 other Class Members are thus entitled to recover civil penalties as provided for by *Labor Code* §§
11 226.8(b) & (c) and 2699(a) & (f)(2).

12 156. The failure to pay minimum wages in violation of *Labor Code* §§ 1182.12, 1194,
13 1194.2, and 1197, as alleged in the First Cause of Action, subjects Defendants PSA to the civil
14 penalty provided in *Labor Code* § 1197.1. Pursuant to *Labor Code* § 2699(a) Plaintiff and the
15 other Class Members as "aggrieved employee[s] on behalf of [themselves] . . . and other current or
16 former employees . . ." are entitled to recover penalties provided in *Labor Code* §§ 210(a), 1197.1
17 & 2669.

18 157. McCormick caused Plaintiff and the other Class Members to be paid less than the
19 minimum wage and violated *Labor Code* §§ 1194, 1194.2, 1197 & 1197.1 through requiring
20 Plaintiff and the other Class Members to work extremely long hours. Pursuant to *Labor Code* §
21 2699(a) Plaintiff and the other Class Members as "aggrieved employee[s] on behalf of
22 [themselves] . . . and other current or former employees . . ." are entitled to recover on a non-class
23 action basis for penalties provided in *Labor Code* §§ 210(a), 1197.1 & 2669(a) and (f)(2).

24 158. The failure to pay overtime wages in violation of *Labor Code* §§ 510 and 1194, as
25 alleged in the Second Cause of Action, entitles Plaintiff and the other Class Members as
26 "aggrieved employee[s] on behalf of [themselves] . . . and other current or former employees . . ."
27 to recover from Defendant PSA civil penalties provided for in *Labor Code* §§ 210, 558, & 2699(a)
28 and (f)(2).

1 159. The failure to pay the wages of employees as provided in *Labor Code* § 204, as
2 alleged in the Third Cause of Action, subjects Defendant PSA to the civil penalty provided in
3 *Labor Code* § 210. Pursuant to *Labor Code* § 2699(a), Plaintiff and the other Class Members as
4 "aggrieved employee[s] on behalf of [themselves] . . . and other current or former employees . . ."
5 are entitled to recover civil penalties provided in *Labor Code* §§ 210, 558 & 2699(a) and (f)(2).

6 160. The failure to furnish employees with accurate itemized wage statements required
7 by *Labor Code* § 226(a), as alleged in the Fourth Cause of Action, entitles Plaintiff and the other
8 Class Members as "aggrieved employee[s] on behalf of [themselves] . . . and other current or
9 former employees . . ." to recover from Defendant PSA civil penalties provided for in *Labor Code*
10 §§ 226 & 2699(f)(2).

11 161. The failure to provide employee with meal periods as required by *Labor Code* §
12 226.7, as alleged in the Fifth Cause of Action, entitles Plaintiff and the other Class Members as
13 "aggrieved employee[s] on behalf of [themselves] . . . and other current or former employees . . ."
14 to recover from Defendant PSA civil penalties provided for in *Labor Code* §§ 558 & 2699(a) and
15 (f)(2).

16 162. The failure to provide employee with rest breaks as required by *Labor Code* §
17 226.7, as alleged in the Sixth Cause of Action, entitles Plaintiff and the other Class Members as
18 "aggrieved employee[s] on behalf of [themselves] . . . and other current or former employees . . ."
19 to recover from Defendant PSA civil penalties provided for in *Labor Code* §§ 558 & 2699(a) and
20 (f)(2).

21 163. The failure to reimburse business expenses as required by *Labor Code* § 2800 and
22 2802, as alleged in the Seventh Cause of Action, entitles Plaintiff and the other Class Members as
23 "aggrieved employee[s] on behalf of [themselves] . . . and other current or former employees . . ."
24 to recover from Defendant PSA civil penalties provided for in *Labor Code* § 2699(f)(2).

25 164. The failure to comply with the requirements of *Labor Code* §§ 201, 202, and 203
26 and pay Plaintiff and the other Class Members wages at the time of termination or within seventy-
27 two hours of resignation, as alleged in the Eighth Cause of Action, entitles Plaintiff and the other
28 Class Members as "aggrieved employee[s] on behalf of [themselves] . . . and other current or

1 former employees . . ." to recover from Defendant PSA for civil penalties provided for in *Labor*
2 *Code* §§ 203 & 2699(a) and (f)(2).

3 165. In causing the violation of *Labor Code* § 510, Defendant PSA and McCormick
4 have violated *Labor Code* § 558, as alleged in the Tenth Cause of Action, entitling Plaintiff and
5 the other Class Members as "aggrieved employee[s] on behalf of [themselves] . . . and other
6 current or former employees . . ." to recover from Defendants PSA and McCormick civil penalties
7 provided for in *Labor Code* §§ 558 & 2699(a) and (f)(2).

8 166. Plaintiff and the other Class Members are entitled to recover reasonable attorneys'
9 fees and costs pursuant to *Labor Code* § 2699(g)(l).

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, individually, and on behalf of the other members of the general
13 public similarly situated, pray that this Court award relief as follows:

- 14 1. Unpaid wages and compensation, and statutory penalties, according to proof;
- 15 2. Restitution of all compensation due, including but not limited to wages and
16 benefits, as a result of Defendants' unlawful and unfair business practices, according to proof;
- 17 3. Preliminary and permanent injunctions enjoining and restraining Defendants from
18 continuing the unfair and unlawful business practices set forth above, and requiring the
19 establishment of appropriate and effective policies, procedures and practices in place to prevent
20 future violations, including the maintenance of records that comply with *Labor Code* § 226 and
21 Wage Order 7-2001;
- 22 4. For civil penalties as provided by PAGA pursuant to the California *Labor Code*,
23 including, but not limited to, sections 203, 210(a), 226(e), 226.8(b) & (c), 558, 1197.1(a), and
24 2699(a) & (f)(2);
- 25 5. Declaratory relief;
- 26 6. Liquidated damages pursuant to *Labor Code* § 1194.2 for Defendants' violations of
27 the minimum-wage provisions of *Labor Code* § 1197 and IWC Wage Order 7-2001, according to
28 proof;

1 7. Reasonable attorneys' fees and costs, pursuant to, *inter alia*, *Labor Code* §§ 218.5,
2 226, 1194, 2699 and 2802, *Code of Civil Procedure* § 1021.5, and *Government Code* § 12965(b);

3 8. Interest accrued on damages and penalties, including pre-judgment interest,
4 pursuant to, *inter alia*, *Labor Code* §§ 218.6, 1194 and 1194.2, and *Civil Code* §§ 3287 and 3288;

5 9. For general damages, according to proof, on each cause of action for which such
6 damages are available;

7 10. For special damages, according to proof, on each cause of action for which such
8 damages are available;

9 11. For compensatory damages, according to proof, on each cause of action for which
10 such damages are available;

11 12. For punitive damages, according to proof, on each cause of action for which such
12 damages are available;

13 13. For specific performance, according to proof, on each cause of action for which
14 such damages are available;

15 14. For costs of suit incurred in this action;

16 15. For a declaration from this Court condemning Defendants' discriminatory policies
17 or practices, as provided by *Code of Civil Procedure* § 1060.

18 16. For an injunction enjoining Defendants from engaging in unlawful employment
19 practices, requiring the posting of notices containing employee rights and detailing Defendants
20 violations of FEHA, requiring Defendants to effectively train their personnel in FEHA's
21 proscriptions against discrimination, and requiring Defendants to make periodic reports to the
22 Court.

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17. For such other and further relief as the Court deems proper and just.

Dated: June 24, 2020

BONONI LAW GROUP, LLP



By: _____

Michael J. Bononi
Christy W. Granieri
Attorneys for Plaintiff
Bradley Falk

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DEMAND FOR JURY TRIAL

Plaintiff Bradley Falk hereby demand a trial by jury on all causes of action alleged herein
in the First Amended Complaint for Damages and Demand for Jury Trial.

Dated: June 24, 2020

BONONI LAW GROUP, LLP



By: _____

Michael J. Bononi
Christy W. Granieri
Attorneys for Plaintiff
Bradley Falk

EXHIBIT A

 BONONI LAW GROUP LLP
301 NORTH LAKE AVENUE
SUITE 820
PASADENA, CALIFORNIA 91101
TELEPHONE (213) 553-9200
FACSIMILE (213) 553-9215

March 31, 2020

VIA US MAIL

Department of Industrial Relations
Accounting Unit
455 Golden Gate Ave, 10th Floor
San Francisco, CA 94102

Re: Bradley Falk v. Palm Springs Auctions, Inc. & Keith McCormick
LWDA Case No. LWDA-CM-781082-20
Payment of Filing Fee for New PAGA Claim

Dear Sir or Madame:

Enclosed please find a check in the amount of \$75 dollars and made payable to the
“LWDA” for the PAGA claim filing fees in the above-captioned matter.

Should you have any questions regarding the foregoing, please do not hesitate to contact
the undersigned.

Very truly yours,



Christy W. Granieri
BONONI LAW GROUP, LLP
cgranieri@bononilawgroup.com

Enclosure

 BONONI LAW GROUP LLP
301 NORTH LAKE AVENUE
SUITE 820
PASADENA, CALIFORNIA 91101
TELEPHONE (213) 553-9200
FACSIMILE (213) 553-9215

March 31, 2019

ELECTRONICALLY FILED WITH LWDA

PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, CA 94612

**Re: Labor Code Violations by Palm Springs Auctions, Inc.
Notice of Claim Seeking California *Labor Code* Section 2699 Penalties**

Dear PAGA Administrator:

Pursuant to the Labor Code Private Attorneys General Act of 2004, California *Labor Code* §§ 2698 *et seq.*, in accordance with the requirements of *Labor Code* § 2699.3, this letter shall constitute written notice of intent to seek penalties under *Labor Code* § 2699. This letter sets forth the specific provisions of the *Labor Code* alleged to have been violated by Palm Springs Auctions, Inc. (“PSA”) and Keith McCormick (“McCormick”), the company’s CEO, (hereinafter collectively referred to as “Defendants”) regarding employee Bradley Falk (“Falk”) and other similarly situated current and former employees, including the facts and theories to support the alleged violations.

Pursuant to *Labor Code* § 558(a), “any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter . . . shall be subject to a civil penalty . . .”

Pursuant to *Labor Code* § 558(a)(1) and 558(a)(2), employers “or other persons” who violate any Labor Code provision regulating hours and days of work are subject to civil penalties “in addition to an amount sufficient to recover unpaid wages.”

Under *Labor Code* § 558.1(a), “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or

hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to *Labor Code* §§ 558 and 558.1, PSA is an employer liable for civil penalties for its wage and hour violations delineated below.

1. Violation of *Labor Code* §§ 226.8 and 2750.3 – Misclassification as Independent Contractor

PSA violated *Labor Code* §§ 226.8 and 2750.3. This violation arises out of, without limitation, PSA’s practice at the direction of McCormick of willfully misclassifying employees as independent contractors.

Pursuant to *Labor Code* § 226.8, “(a) It is unlawful for any person or employer to engage in any of the following activities . . . Willful misclassification of an individual as an independent contractor. (b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law. (c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.”

Effective January 1, 2020, *Labor Code* § 2750.3 codified the California Supreme Court’s holding in *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903 (2018) that the “ABC” test shall be used to distinguish whether an individual is an employee or independent contractor. Pursuant to *Labor Code* § 2750.3(a), “a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

- (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- (B) The person performs work that is outside the usual course of the hiring entity’s business.
- (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

There is no question that PSA misclassified Mr. Falk and other aggrieved employees as independent contractors.

(A) McCormick’s October 30, 2019 email to Mr. Falk clearly shows the amount of control and direction that McCormick had over Mr. Falk’s work. (See Exhibit “A.”) Mr. Falk never made any independent decisions on how to complete his work or what tasks he needed to do. PSA directed Mr. Falk on how each task was to be completed and told him what to do.

(B) PSA cannot prove Mr. Falk “perform[ed] work that is outside the usual course of the hiring entity’s business.” “An employer fails to make the necessary showing under prong B if a court finds that the work performed is ‘not merely incidental to’ [the company’s] business, but rather is an ‘integral part’ of that business.” *Gonzalez v. San Gabriel Transit Inc.*, 40 Cal.App.5th 1131, 1154 (2019) (citing *Dynamex*, at 961).

Throughout his employment with PSA, all of the work that Mr. Falk performed for PSA was integral to PSA’s business – the Palm Springs vehicle auction and car sales. Mr. Falk repaired McCormick’s vehicles, set up the car auction, drove potential customers to and from the auction, and broke down the auction. None of Mr. Falk’s work can be described as “incidental” to PSA’s business of hosting classic car auctions. The work Mr. Falk did was action essential to PSA being able to put on a classic car auction.

(C) Mr. Falk was not engaged in any independently established trade, occupation, or business. “Such an individual generally takes the usual steps to establish and promote his or her business – for example, through incorporation, licensure, advertisements, routine offerings to provide the services of the independent business to the public or to a number of potential customers, and the like.” *Dynamex, supra*, at 962. “Critically, Part C requires the hirer show a worker *actually be engaged* in an independent business, *not merely that he or she could be*.” *Gonzalez, supra* at 1155 (italics in original).

Mr. Falk was unemployed when he applied for the salesman position at PSA. He does not own a business, nor does he provide any services like he did for PSA to any other company or person. After his illegal termination, Mr. Falk has continued to look for new employment. Mr. Falk has not opened a business and he does not plan to do so. There is no cognizable fact that would allow anyone to conclude that Mr. Falk was engaged in an independently established trade, occupation, or business.

2. Violation of *Labor Code* §§ 510 and 1194 – Failure to Pay Overtime Compensation

PSA violated *Labor Code* §§ 510 and 1194. This violation arises out of, without limitation, PSA’s practice of failing to pay Mr. Falk and other aggrieved current and former non-exempt employees the applicable premium rate of pay when their work exceeds eight (8) hours in a day, or forty (40) hours in a week.

Pursuant to California *Labor Code* § 510, “any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek...shall be compensated at the rate of no less than one-and-one half times the regular rate of pay for the employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee....”

Pursuant to California *Labor Code* § 1194, “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.”

PSA is liable under *Labor Code* §§ 510 and 1194 as a result of illegally misclassifying Mr. Falk and other aggrieved current and former employees as independent contractors. Because PSA misclassified its employees as independent contractors, it did not pay them the applicable premium rate of pay when their work exceeded eight (8) hours in a day, or forty (40) hours in a week. For instance, PSA failed to pay Mr. Falk at the applicable premium rate of pay for the overtime hours that he worked on the following dates:

On November 18, 2019, Mr. Falk worked 11 hours.

On November 19, 2019, Mr. Falk worked 10 hours.

On November 20, 2019, Mr. Falk worked 10 hours.

On November 21, 2019, Mr. Falk worked 10 hours.

On November 22, 2019, Mr. Falk worked 13 hours.

On November 23, 2019, Mr. Falk worked 12 hours.

On November 24, 2019, Mr. Falk worked 10 hours.

On November 25, 2019, Mr. Falk worked 11 hours.

On November 26, 2019, Mr. Falk worked 10 hours.

A true and correct copy of Mr. Falk’s November 22, 2019 wage statement showing all hours from November 18, 2019 through November 22, 2019 is attached hereto as Exhibit “B.” A true and correct copy of Mr. Falk’s November 27, 2019 wage statement showing all hours from November 23, 2019 through November 27, 2019 is attached hereto as Exhibit “C.”

PSA, at the direction of McCormick, never paid Mr. Falk premium pay for overtime hours in accordance with California law.

3. Violation of *Labor Code* §§ 226.7 and 512 – Failure to Provide Meal and Rest Break Periods

PSA violated *Labor Code* §§ 226.7 and 512. This violation arises out of, without limitation, PSA's practice of failing to authorize and provide Mr. Falk and other aggrieved current and former employees meal and rest break periods.

Pursuant to *Labor Code* § 226.7, "[i]f an employer fails to provide an employee a meal or rest period or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, . . . the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

The applicable wage order of the Industrial Welfare Commission, Wage Order 7-2001 ("Wage Order No. 7"), at § 11, states "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. . . An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes."

Wage Order No. 7, at § 12, states "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

Pursuant to *Labor Code* § 512(a), "[a]n employer shall 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, except if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

PSA is liable under *Labor Code* §§ 226.7 and 512 as a result of illegally misclassifying Mr. Falk and other aggrieved current and former employees as independent contractors. Because PSA misclassifies its employees as independent contractors, it does not authorize or provide them with an uninterrupted thirty (30) minute meal period for every day on which they work more than five hours or a second meal period for every day on which they work more than ten (10) hours. Furthermore, PSA does not provide its employees with an uninterrupted ten (10) minute rest break period for every four hours worked or major fraction thereof. The foregoing conduct renders PSA liable for violating *Labor Code* §§ 226.7 and 512.

4. Violation of *Labor Code* §§ 201 and 203 – Failure to Pay All Wages Due to a Discharged Employee

PSA violated *Labor Code* §§ 201. This violation arises out of, without limitation, PSA’s practice of knowingly and intentionally failing to timely pay all wages due to a discharged employee.

Pursuant to California *Labor Code* § 201, on the date of termination, “wages earned and unpaid at the time of discharge [were] due and payable immediately.”

Pursuant to California *Labor Code* § 203, “[i]f an employer willfully fails to pay . . . in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

PSA and/or McCormick willfully failed to pay Mr. Falk all wages earned upon his termination as required by *Labor Code* § 201. Because PSA failed to pay Mr. Falk for the overtime hours he worked and missed meal and rest break premiums, PSA failed to pay Mr. Falk all his earned wages at discharge. The failure to pay Mr. Falk all his wages as required by *Labor Code* § 201 entitles Mr. Falk to 30 days waiting time penalties pursuant to *Labor Code* § 203.

5. Violation of *Labor Code* §§ 204 and 210 – Failure to Timely Pay Earned Wages

PSA violated *Labor Code* § 204. This violation arises out of, without limitation, PSA’s practice of knowingly and intentionally failing to timely pay all earned wages to employees on each payday.

Pursuant to *Labor Code* § 204(a), “all wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

Pursuant to *Labor Code* § 210(a), “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections . . . 204 . . . shall be subject to a penalty as follows:

- (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

PSA is liable under *Labor Code* § 204 as a result of illegally misclassifying Mr. Falk and other aggrieved current and former employees as independent contractors. Because PSA misclassifies its employees as independent contractors, it fails to pay them overtime compensation, and as a result, fails to pay them all wages earned when they are due and payable. The foregoing conduct renders PSA liable under *Labor Code* §§ 204 and 210.

6. Violation of *Labor Code* § 226 – Failure to Furnish Accurate Itemized Wage Statements

PSA violated *Labor Code* § 226(a). This violation arises out of, without limitation, PSA's practice of failing to furnish employees at the time of each payment of wages with an accurate itemized statement in writing showing all of the items required by *Labor Code* § 226(a), including, but not limited to:

- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number
- (8) the name and address of the legal entity that is the employer. . .

The wage statements furnished to Mr. Falk and other aggrieved current and former employees of PSA at the time of each payment of wages fail to show (1) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; and (2) the address of PSA.

PSA violated *Labor Code* § 226(a)(7) because the wage statements furnished to Mr. Falk and other aggrieved current and former employees failed to accurately show the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number. For instance, Mr. Falk's earning statement does not show either his name or his social security or employee identification number. (Exhibits "B" & "C".)

PSA violated *Labor Code* § 226(a)(8) because the wage statements furnished to Mr. Falk and other aggrieved current and former employees do not show PSA's address. (Exhibits "B" & "C".) The company included its name and address

PSA engaged in the foregoing conduct willfully and intentionally. Mr. Falk was directly affected and/or injured by the foregoing practices. Mr. Falk brings this claim and seeks those penalties on his own behalf as an aggrieved employee and on behalf of other current or former employees of PSA. *Labor Code* §§ 2699(a) and 2699.3.

Please consider this letter, the enclosed letter to PSA and our online filing as notice of intent to seek penalties under *Labor Code* § 2699, *et seq.*, as required by Section 2699.3.

March 31, 2019

Page 8

Very truly yours,



Christy W. Granieri
BONONI LAW GROUP, LLP
cgranieri@bononilawgroup.com

Enclosures

cc: **Via Certified Mail**

Palm Springs Auctions, Inc., Attn: Keith McCormick, 244 N Indian Canyon Dr., Palm
Springs, CA 92262

Mitchell Sussman, Esq., 1053 S Palm Canyon Dr., Palm Springs, CA 92264

EXHIBIT A

Re: MCCORMICK'S PALM SPRINGS

Thu 10/31/2019 10:20 AM

From: "keith@classic-carauction.com"

To: "Bradley Falk"



#3 After I have worked with you for the couple of weeks we will go through a schedule then..

yours
Keith

Keith McCormick
Palm Springs Exotic Car Auctions
244 N. Indian Canyon Dr
Palm Springs, California 92262
tel 760.320.3290 fax 760.323.7031
www.Classic-CarAuction.com

From: "Bradley Falk" <bradleyfalk06@gmail.com>

Sent: Thursday, October 31, 2019 9:03 AM

To: keith@classic-carauction.com

Subject: Re: MCCORMICK'S PALM SPRINGS

Hey Keith,

Thanks for providing me with the schedule. There won't be any issue with the hours you outlined, and I'd be happy to take a look at the door problems.

#2 I would like to follow up with you about what the days will look like after the auction, and if you are still planning on hiring another salesman or if you are waiting to see the results of the probation period.

Excited to start and looking forward to meeting Jack and the rest of the crew.

Thank You,

Brad

On 10/30/2019 11:35 AM, keith@classic-carauction.com wrote:

Hi Brad,

Just keeping you in the loop of what is going on here and your schedule for the November Auction.

#1 Your first day will be Thursday November 14th at 8am...Dress for light mechanicing and general maintenance of our in house shuttle buses and golf carts. We take then (3 shuttle buses) to the Shell gas station for oil and filter changes. Then you check them out for any minor repairs needed. I know one of our 15 seater Ford's has a side door opening problem that needs attention. Our works Ford F150 pick up also has a back passenger door catch problem. The 3 golf carts will need the batteries checking and charging up and general check over. You will finish at 5pm that day.

Friday 15th you will work with me numbering the Convention Center parking spaces with chalk .8AM TO 5PM.

Saturday 16th V.I.N. verifying any early arrival cars for our auction event..I will explain and show you the procedure..General checking cars on the lot to make sure batteries are charges etc,etc.9AM TO 4PM. Load 2 pickups with set up stuff for Convention Center.

Sunday 17th we are closed.

Monday 18th you are with me at Convention Center doing set up jobs. Meet me at Center at 6am...very busy day as tent company and fence goes up. You should by then have met Jack who is the drivers team leader .He has worked with us for many years..great guy.

Tuesday 19th you are with me as my right hand man at Convention Center. 7am to 5pm.

Wednesday 20th help move cars from our showroom to Convention Center with our other drivers. 7am to 5pm

Thursday 21st... Assist me in finishing set up. 6am to 6pm.. You will disconnect all car batteries of cars parked under canopies. They will need re-connecting to run through the auction tent.

Friday 22nd... same as above. Auction starts at noon to 8pm.... This will be a long day as you start at 6am.

Saturday 23 and Sunday 24 Auction days ... 8am to 8pm... Sunday 6pm close.

Monday 25th help tear down event and bring cars back to dealership for storage 6am to 6pm.

Tuesday 26th the same... 6am to 6pm

Wednesday 27th.. help truckers load cars for delivery out 8am to 5pm..

Thursday 28th Thanksgiving we will be closed.

Friday 29th. 8AM to 5PM help truckers load cars

Saturday 30th same as above 8 to 5

Sunday closed.

Sounds a lot of hours I know. If you manage to sell something you will receive the extra commission I mentioned.

David salesman is on probation until end of December as mentioned to you. By then we should have got to know each other well and your future with us can be discussed. Please confirm all this is good with you.

yours

Keith McCormick..

Keith McCormick

Palm Springs Exotic Car Auctions

244 N. Indian Canyon Dr

Palm Springs, California 92262

tel 760.320.3290 fax 760.323.7031

www.Classic-CarAuction.com

EXHIBIT B



PALM SPRINGS AUCTIONS, INC.
DBA PALM SPRINGS EXOTIC CAR AUCTIONS
WWW.CLASSIC-CARAUCTION.COM
244 N INDIAN CANYON DR. PH. 760-320-3290
PALM SPRINGS, CA 92262

60388

DATE

Nov 22 - 2019

90-8578/3222

PAY TO THE
ORDER OF

Brad Falk

\$ 1185.00

DOLLARS



PACIFIC PREMIER BANK

901 E. TAHQUITZ CANYON WAY
PALM SPRINGS, 92262
1-760-660-4544

NOT VALID OVER 60 DAYS

NOT NEGOTIABLE

⑈060388⑈ ⑆322285781⑆1717193195⑈

PALM SPRINGS AUCTIONS, INC.

Reynolds & Reynolds (866) 756-2835
PRODUCT 55202N

60388

INVOICE		YEAR DESCRIPTION	TOTAL AMOUNT	DEDUCTIONS		NET AMOUNT
DATE	LOT NO.			-5% DISCOUNT	D.M.V.	
		M.W 6-5 11 @ 15		165		
		Tue 7-5 11 @ 15		165		
		Wed 7-5 11 @ 15		165		
		Thurs 7-8 10 @ 30		300		
		Fri 7-8 13 @ 30		390		
				\$ 1185.00		

EXHIBIT C



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60455

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DATE Nov 27 2019

PAY TO THE
ORDER OF

Brad Falk

\$ 1185 ⁰⁰/₁₀₀

One Thousand one hundred eighty five

DOLLARS



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		Mon (") 7am - 5pm	11 @ 30			330 -
		Tues Regular 6am - 4pm	10 @ 15			150 -
		Wed Regular 9am - 12 noon	3 @ 15			45 -
						\$1185 -

EXHIBIT B

 BONONI LAW GROUP LLP
301 NORTH LAKE AVENUE
SUITE 820
PASADENA, CALIFORNIA 91101
TELEPHONE (213) 553-9200
FACSIMILE (213) 553-9215

March 31, 2019

ELECTRONICALLY FILED WITH LWDA

PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, CA 94612

**Re: Labor Code Violations by Keith McCormick for Palm Springs Auctions, Inc.
Notice of Claim Seeking California Labor Code § 2699 Penalties**

Dear PAGA Administrator:

Pursuant to the Labor Code Private Attorneys General Act of 2004, California *Labor Code* §§ 2698 *et seq.*, in accordance with the requirements of *Labor Code* § 2699.3, this letter shall constitute written notice of intent to seek penalties under *Labor Code* § 2699. This letter sets forth the specific provisions of the Labor Code alleged to have been violated by Palm Springs Auctions, Inc. (“PSA”) and Keith McCormick (“McCormick”) (hereinafter collectively referred to as “Defendants”) regarding employee Bradley Falk (“Falk”) and other similarly situated current and former employees, including the facts and theories to support the alleged violations.

McCormick is the Chief Executive Officer of PSA. It is believed that based on his position within PSA, McCormick has violated or caused PSA to violate the California Labor Code regarding payment of wage to his and PSA’s employees.

Pursuant to *Labor Code* § 558(a) “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

- (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
- (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

Pursuant to *Labor Code* § 558.1, “(a) [a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation. (b) For purposes of this section, the term ‘other person acting on behalf of an employer’ is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term ‘managing agent’ has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.”

Pursuant to *Labor Code* §§ 558 and 558.1, McCormick is responsible as an “other person acting on behalf of an employer” for causing the wage and hour violations delineated below.

1. Violation of *Labor Code* §§ 226.8 and 2750.3 – Misclassification as Independent Contractor

McCormick violated *Labor Code* §§ 226.8 and 2750.3. This violation arises out of, without limitation, PSA’s practice, at the direction of McCormick, of willfully misclassifying employees as independent contractors.

Pursuant to *Labor Code* § 226.8, “(a) It is unlawful for any person or employer to engage in any of the following activities . . . Willful misclassification of an individual as an independent contractor. (b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law. (c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.”

Effective January 1, 2020, *Labor Code* § 2750.3 codified the California Supreme Court’s holding in *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903 (2018) that the “ABC” test shall be used to distinguish whether an individual is an employee or independent contractor. Pursuant to *Labor Code* § 2750.3(a), “a person providing labor or services for

remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

- (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- (B) The person performs work that is outside the usual course of the hiring entity's business.
- (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

There is no question that PSA and McCormick misclassified Mr. Falk and other aggrieved employees as independent contractors.

(A) McCormick's October 30, 2019 email to Mr. Falk clearly shows the amount of control and direction that McCormick had over Mr. Falk's work. (See Exhibit "A.") Mr. Falk never made any independent decisions on how to complete his work or what tasks he needed to do. PSA and/or McCormick directed Mr. Falk on how each task was to be completed and told him how to complete each task.

(B) PSA cannot prove Mr. Falk "perform[ed] work that is outside the usual course of the hiring entity's business." "An employer fails to make the necessary showing under prong B if a court finds that the work performed is 'not merely incidental to' [the company's] business, but rather is an 'integral part' of that business." *Gonzalez v. San Gabriel Transit Inc.*, 40 Cal.App.5th 1131, 1154 (2019) (citing *Dynamex*, at 961).

Throughout his employment with PSA, all of the work that Mr. Falk performed for PSA was integral to PSA's business – the Palm Springs vehicle auction and car sales. Mr. Falk repaired McCormick's vehicles, set up the car auction, drove potential customers to and from the auction, and broke down the auction. None of Mr. Falk's work can be described as "incidental" to PSA's business of hosting classic car auctions. The work Mr. Falk did was action essential to PSA being able to put on a classic car auction.

(C) Mr. Falk was not engaged in any independently established trade, occupation, or business. "Such an individual generally takes the usual steps to establish and promote his or her business – for example, through incorporation, licensure, advertisements, routine offerings to provide the services of the independent business to the public or to a number of potential customers, and the like." *Dynamex*, *supra*, at 962. "Critically, Part C requires the hirer show a worker *actually be engaged* in an independent business, *not merely that he or she could be*." *Gonzalez*, *supra* at 1155 (italics in original).

Mr. Falk was unemployed when he applied for the salesman position at PSA. He does not own a business, nor does he provide any services like he did for PSA to any other company or person. After his illegal termination, Mr. Falk has continued to look for new employment. Mr. Falk has not opened a business and he does not plan to do so. There is no cognizable fact that would allow anyone to conclude that Mr. Falk was engaged in an independently established trade, occupation, or business.

2. Violation of *Labor Code* §§ 510 and 1194 – Failure to Pay Overtime Compensation

McCormick violated *Labor Code* §§ 510 and 1194. This violation arises out of, without limitation, PSA's practice, at McCormick's direction, of failing to pay Mr. Falk and other aggrieved current and former non-exempt employees the applicable premium rate of pay when their work exceeds eight (8) hours in a day, or forty (40) hours in a week.

Pursuant to California *Labor Code* § 510, "any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek...shall be compensated at the rate of no less than one-and-one half times the regular rate of pay for the employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee...."

Pursuant to California *Labor Code* § 1194, "any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit."

McCormick is liable under *Labor Code* §§ 510 and 1194 as a result of illegally misclassifying Mr. Falk and other aggrieved current and former employees as independent contractors. Because McCormick misclassified its employees as independent contractors, he did not pay them the applicable premium rate of pay when their work exceeded eight (8) hours in a day, or forty (40) hours in a week. For instance, McCormick failed to pay Mr. Falk at the applicable premium rate of pay for the overtime hours that he worked on the following dates:

On November 18, 2019, Mr. Falk worked 11 hours.

On November 19, 2019, Mr. Falk worked 10 hours.

On November 20, 2019, Mr. Falk worked 10 hours.

On November 21, 2019, Mr. Falk worked 10 hours.

On November 22, 2019, Mr. Falk worked 13 hours.

On November 23, 2019, Mr. Falk worked 12 hours.

On November 24, 2019, Mr. Falk worked 10 hours.

On November 25, 2019, Mr. Falk worked 11 hours.

On November 26, 2019, Mr. Falk worked 10 hours.

A true and correct copy of Mr. Falk's November 22, 2019 wage statement showing all hours from November 18, 2019 through November 22, 2019 is attached hereto as Exhibit "B." A true and correct copy of Mr. Falk's November 27, 2019 wage statement showing all hours from November 23, 2019 through November 27, 2019 is attached hereto as Exhibit "C."

3. Violation of *Labor Code* § 226.7 and 512 – Failure to Provide Meal and Rest Break Periods

McCormick violated *Labor Code* §§ 226.7 and 512. This violation arises out of, without limitation, PSA's practice at the direction of McCormick, of failing to authorize and provide Mr. Falk and other aggrieved current and former employees meal and rest break periods.

Pursuant to *Labor Code* § 226.7, "[i]f an employer fails to provide an employee a meal or rest period or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, . . . the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

The applicable wage order of the Industrial Welfare Commission, Wage Order 7-2001 ("Wage Order No. 7"), at § 11, states "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. . . An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes."

Wage Order No. 7, at § 12, states "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

Pursuant to *Labor Code* § 512(a), "[a]n employer shall 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, except if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be

waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

McCormick is liable under *Labor Code* §§ 226.7 and 512 as a result of illegally misclassifying Mr. Falk and other aggrieved current and former employees as independent contractors. Because McCormick misclassifies his employees as independent contractors, he does not authorize or provide them with an uninterrupted thirty (30) minute meal period for every day on which they work more than five hours or a second meal period for every day on which they work more than ten (10) hours. Furthermore, McCormick does not provide his employees with an uninterrupted ten (10) minute rest break period for every four hours worked or major fraction thereof. The foregoing conduct renders McCormick liable for violating *Labor Code* §§ 226.7 and 512.

4. Violation of *Labor Code* §§ 201 and 203 – Failure to Pay All Wages Due to a Discharged Employee

McCormick violated *Labor Code* §§ 201. This violation arises out of, without limitation, McCormick’s practice of knowingly and intentionally failing to timely pay all wages due to a discharged employee.

Pursuant to California *Labor Code* § 201, on the date of termination, “wages earned and unpaid at the time of discharge [were] due and payable immediately.”

Pursuant to California *Labor Code* § 203, “[i]f an employer willfully fails to pay . . . in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

McCormick willfully failed to pay Mr. Falk all wages earned upon his termination as required by *Labor Code* § 201. Because McCormick failed to pay Mr. Falk for the overtime hours he worked and missed meal and rest break premiums, McCormick failed to pay Mr. Falk all his earned wages at discharge. The failure to pay Mr. Falk all his wages as required by *Labor Code* § 201 entitles Mr. Falk to 30 days waiting time penalties pursuant to *Labor Code* § 203.

5. Violation of *Labor Code* §§ 204 and 210 – Failure to Timely Pay Earned Wages

McCormick violated *Labor Code* § 204. This violation arises out of, without limitation, McCormick’s practice of knowingly and intentionally failing to timely pay earned wages to employees on each payday.

Pursuant to *Labor Code* § 204(a), “all wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

Pursuant to *Labor Code* § 210(a), “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections . . . 204 . . . shall be subject to a penalty as follows:

- (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

McCormick is liable under *Labor Code* § 204 as a result of illegally misclassifying Mr. Falk and other aggrieved current and former employees as independent contractors. Because McCormick misclassifies its employees as independent contractors, he fails to pay them overtime compensation, and as a result, fails to pay them all wages earned when they are due and payable. The foregoing conduct renders McCormick liable under *Labor Code* §§ 204 and 210.

6. Violation of *Labor Code* § 226 – Failure to Furnish Accurate Itemized Wage Statements

McCormick violated *Labor Code* § 226(a). This violation arises out of, without limitation, McCormick’s practice of failing to furnish employees at the time of each payment of wages with an accurate itemized statement in writing showing all of the items required by *Labor Code* § 226(a), including, but not limited to:

- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number
- (8) the name and address of the legal entity that is the employer. . .

The wage statements furnished to Mr. Falk and other aggrieved current and former employees of McCormick at the time of each payment of wages fail to show (1) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; and (2) the address of PSA.

PSA, at McCormick’s direction, violated *Labor Code* § 226(a)(7) because the wage statements furnished to Mr. Falk and other aggrieved current and former employees failed to accurately show the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number. For instance, Mr. Falk’s earning statement does not show either his name or his social security or employee identification number. (See Exhibits “B” & “C”.)

March 31, 2019

Page 8

PSA, at McCormick's direction, violated *Labor Code* § 226(a)(8) because the wage statements furnished to Mr. Falk and other aggrieved current and former employees do not show PSA's address. (See Exhibits "B" & "C".)

McCormick engaged in the foregoing conduct willfully and intentionally. Mr. Falk was directly affected and/or injured by the foregoing practices. Mr. Falk brings this claim and seeks those penalties on his own behalf as an aggrieved employee and on behalf of other current or former employees of McCormick. *Labor Code* §§ 2699(a) and 2699.3.

Please consider this letter, the enclosed letter to McCormick and our online filing as notice of intent to seek penalties under *Labor Code* § 2699, *et seq.*, as required by § 2699.3.

Very truly yours,



Christy W. Granieri
BONONI LAW GROUP, LLP
cgranieri@bononilawgroup.com

Enclosures

cc: **Via Certified Mail**

Keith McCormick, 244 N Indian Canyon Dr., Palm Springs, CA 92262

Mitchell Sussman, Esq., 1053 S Palm Canyon Dr., Palm Springs, CA 92264

EXHIBIT A

Re: MCCORMICK'S PALM SPRINGS

Thu 10/31/2019 10:20 AM

From: "keith@classic-carauction.com"

To: "Bradley Falk"



#3 After I have worked with you for the couple of weeks we will go through a schedule then..

yours
Keith

Keith McCormick
Palm Springs Exotic Car Auctions
244 N. Indian Canyon Dr
Palm Springs, California 92262
tel 760.320.3290 fax 760.323.7031
www.Classic-CarAuction.com

From: "Bradley Falk" <bradleyfalk06@gmail.com>

Sent: Thursday, October 31, 2019 9:03 AM

To: keith@classic-carauction.com

Subject: Re: MCCORMICK'S PALM SPRINGS

Hey Keith,

Thanks for providing me with the schedule. There won't be any issue with the hours you outlined, and I'd be happy to take a look at the door problems.

#2 I would like to follow up with you about what the days will look like after the auction, and if you are still planning on hiring another salesman or if you are waiting to see the results of the probation period.

Excited to start and looking forward to meeting Jack and the rest of the crew.

Thank You,

Brad

On 10/30/2019 11:35 AM, keith@classic-carauction.com wrote:

Hi Brad,

Just keeping you in the loop of what is going on here and your schedule for the November Auction.

#1 Your first day will be Thursday November 14th at 8am...Dress for light mechanicing and general maintenance of our in house shuttle buses and golf carts. We take then (3 shuttle buses) to the Shell gas station for oil and filter changes. Then you check them out for any minor repairs needed. I know one of our 15 seater Ford's has a side door opening problem that needs attention. Our works Ford F150 pick up also has a back passenger door catch problem. The 3 golf carts will need the batteries checking and charging up and general check over. You will finish at 5pm that day.

Friday 15th you will work with me numbering the Convention Center parking spaces with chalk .8AM TO 5PM.

Saturday 16th V.I.N. verifying any early arrival cars for our auction event..I will explain and show you the procedure..General checking cars on the lot to make sure batteries are charges etc,etc.9AM TO 4PM. Load 2 pickups with set up stuff for Convention Center.

Sunday 17th we are closed.

Monday 18th you are with me at Convention Center doing set up jobs. Meet me at Center at 6am...very busy day as tent company and fence goes up. You should by then have met Jack who is the drivers team leader .He has worked with us for many years..great guy.

Tuesday 19th you are with me as my right hand man at Convention Center.7am to 5pm.

Wednesday 20th help move cars from our showroom to Convention Center with our other drivers.7am to 5pm

Thursday 21st...Assist me in finishing set up.6am to 6pm..You will disconnect all car batteries of cars parked under canopies .They will need re-connecting to run through the auction tent.

Friday 22nd...same as above. Auction starts at noon to 8pm....This will be a long day as you start at 6am.

Saturday 23 and Sunday 24 Auction days ...8am to 8pm...Sunday 6pm close.

Monday 25th help tear down event and bring cars back to dealership for storage 6am to 6pm.

Tuesday 26th the same...6am to 6pm

Wednesday 27th..help truckers load cars for delivery out 8am to 5pm..

Thursday 28th Thanksgiving we will be closed.

Friday 29th. 8AM to 5PM help truckers load cars

Saturday 30th same as above 8 to 5

Sunday closed.

Sounds a lot of hours I know. If you manage to sell something you will receive the extra commission I mentioned.

David salesman is on probation until end of December as mentioned to you. By then we should have got to know each other well and your future with us can be discussed. Please confirm all this is good with you.

yours

Keith McCormick..

Keith McCormick

Palm Springs Exotic Car Auctions

244 N. Indian Canyon Dr

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tel 760.320.3290 fax 760.323.7031

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EXHIBIT B



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60388

DATE

Nov 22 - 2019

90-8578/3222

PAY TO THE
ORDER OF

Brad Falk

\$ 1185.00

DOLLARS



PACIFIC PREMIER BANK

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PALM SPRINGS AUCTIONS, INC.

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PRODUCT 55202N

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EXHIBIT C



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DATE Nov 27 2019

PAY TO THE
ORDER OF

Brad Falk

\$ 1185 00/100

One Thousand one hundred eighty five

DOLLARS



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INVOICE		YEAR DESCRIPTION	TOTAL AMOUNT	DEDUCTIONS		NET AMOUNT
DATE	LOT. NO.			-5% DISCOUNT	D.M.V.	
		Sat (Auction Day) 7am to 7pm	12 @ 30			360 -
		Sun (") 7am - 5pm	10 @ 30			300 -
		Mon (") 7am - 5pm	11 @ 30			330 -
		Tues Regular 6am - 4pm	10 @ 15			150 -
		Wed Regular 9am - 12 noon	3 @ 15			45 -
						\$1185 -

EXHIBIT C



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

December 27, 2019

Austin Schulz-Amos
Bononi Law Group, LLP, 301 N. Lake Ave, Suite 820
Pasadena, California 91101

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 201912-08705327
Right to Sue: Falk / Palm Springs Auctions, Inc.

Dear Austin Schulz-Amos:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

December 27, 2019

RE: **Notice of Filing of Discrimination Complaint**

Dfeh Matter Number: 201912-08705327

Right to Sue: Falk / Palm Springs Auctions, Inc.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

December 27, 2019

Bradley Falk
1150 Amado Rd., Unit 17C2
Palm Springs, California 92262

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 201912-08705327
Right to Sue: Falk / Palm Springs Auctions, Inc.

Dear Bradley Falk,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective December 27, 2019 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 **In the Matter of the Complaint of**

7 Bradley Falk

DFEH No. 201912-08705327

8 Complainant,

9 vs.

10 Palm Springs Auctions, Inc.
11 244 N Indian Canyon Dr
12 Palm Springs, California 92262

13 Respondents

14 1. Respondent **Palm Springs Auctions, Inc.** is an **employer** subject to suit under
15 the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et
16 seq.).

17 2. Complainant **Bradley Falk**, resides in the City of **Palm Springs** State of
18 **California.**

19 3. Complainant alleges that on or about **November 27, 2019**, respondent took the
20 following adverse actions:

21 **Complainant was discriminated against** because of complainant's age (40 and
22 over) and as a result of the discrimination was terminated, other.

23 **Additional Complaint Details:** Bradley Falk is sixty-two (62) years old. On
24 November 14, 2019, Mr. Falk began his employment with Palm Springs Auctions,
25 Inc. ("PSA"). During the course of his employment. Mr. Falk performed every job and
26 task that he was assigned without receiving any negative feedback or criticism. On
27 November 27, 2019, Mr. Falk was handed a termination letter which stated that PSA
28 wanted to hire a much younger person. Therefore, PSA discriminated against Mr.
Falk when PSA wrongfully terminated Mr. Falk because of his age. PSA also failed
to take steps to prevent illegal discrimination and/or harassment from occurring.

1 VERIFICATION

2 I, **Austin Schulz-Amos**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On December 27, 2019, I declare under penalty of perjury under the laws of the State
6 of California that the foregoing is true and correct.

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Pasadena, CA