

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Michael Stern

Kevin Mahoney (SBN: 235367)
kmahoney@mahoney-law.net
Atoy H. Wilson (SBN: 305259)
awilson@mahoney-law.net
MAHONEY LAW GROUP, APC
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

Attorneys for Plaintiff LUIS GARCIA, as an individual and on behalf of all aggrieved employees

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

LUIS GARCIA, as an individual and on
behalf of all aggrieved employees,

Plaintiff.

v.

CAR AROMA SUPPLIES, INC., a
California corporation, and DOES 1 through
50, inclusive,

Defendant.

Case No.: **20STCV22269**

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, AND
RESTITUTION**

1. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Recovery of Unpaid Minimum Wage and Overtime;
2. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to provide Rest Periods;
4. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to Pay Wages Due upon Termination of Employment;
5. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to Provide Accurate Itemized Wage Statements; and
6. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to Indemnify for Expenditures or Losses in Discharge of Duties

REQUEST FOR JURY TRIAL

1 Plaintiff LUIS GARCIA (hereinafter "GARCIA" or "Plaintiff") on behalf of himself and
2 all others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is an action brought on behalf of Plaintiff LUIS GARCIA ("Plaintiff") and
5 the similarly Aggrieved Employees he seeks to represent, as defined herein, as all non-exempt
6 employees employed by or formerly employed by Defendant CAR AROMA SUPPLIES, INC.
7 ("Defendant.") The Aggrieved Employees consists of all non-exempt employees working in their
8 position as salespersons, and similar or related positions, and employed by or formerly employed
9 by Defendant within the State of California who are California Citizens at the time of the filing
10 of this Complaint. The term "Liability Period" or "Time Period" is defined as one (1) year prior
11 to the filing of Plaintiff's administrative complaint with the Labor and Workforce Development
12 Agency (LWDA) through the present. Plaintiff filed his administrative complaint with the LWDA
13 on March 19, 2020. The Liability Period is from March 19, 2020 to the present. Plaintiff reserves
14 the right to amend this complaint to reflect a different "Time Period" or modify the definition of
15 "Aggrieved Employees" as further discovery is conducted.

16 2. Plaintiff individually and on behalf of the Aggrieved Employees he seeks to
17 represent, seeks relief against Defendant for (1) failure to pay all wages due, including minimum
18 wage and overtime wages as a result of Defendant's policy of improperly paying its non-exempt
19 hourly employees; (2) failure to provide meal and rest periods or compensation in lieu thereof;
20 (3) failure to pay wages upon ending employment to terminated or resigned employees; (4) failure
21 to provide accurate itemized wage statements; and (5) failure to reimburse for necessary business
22 expenditures. Plaintiff further seeks equitable remedies in the form of declaratory relief and
23 injunctive relief, and relief under Business and Professions Code section 17200 et seq. for unfair
24 business practices.

25 3. Plaintiff seeks penalties pursuant to Labor Code section 2608 et seq., the Private
26 Attorneys General Act of 2004 (hereinafter "PAGA") in connection with Defendants' Labor Code
27 violations.

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1 4. At all relevant times herein, Defendants consistently maintained and enforced
2 against Plaintiff and Aggrieved Employees the following unlawful practices and policies: a)
3 willfully refusing to pay Plaintiff and Aggrieved Employees for all hours worked, including
4 minimum wage and overtime; b) willfully refusing to compensate Plaintiff and Aggrieved
5 Employees wages due and owing at the time Plaintiff's and Aggrieved Employees' employment
6 with Defendants ended; c) willfully refusing to furnish to Plaintiff and Aggrieved Employees
7 accurate itemized wage statements upon payment of wages; d) willfully failing to reimburse
8 Plaintiff and Aggrieved Employees for necessary expenditures.

9 **JURISDICTION AND VENUE**

10 5. This Court has subject matter jurisdiction over the causes of action alleged in this
11 Complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
12 excluded from exercising subject matter jurisdiction over said causes of action.

13 6. Venue is proper in this Judicial district and the County of Los Angeles, because
14 the Defendant maintains its locations and transacts business in this county, the obligations and
15 liability arise in this county, and work was performed by Plaintiff and members of the Plaintiff
16 Class made the subject of this action in the County of Los Angeles, California.

17 7. The California Superior Court has jurisdiction in the matter because the individual
18 claims are under the seventy-five thousand-dollar (\$75,000.00) individual jurisdictional threshold
19 and the five million-dollar (\$5,000,000) aggregate jurisdictional threshold for Federal Court and,
20 upon information and belief, Plaintiff and Defendant are residents of and/or domiciled in the State
21 of California. Further, there is no federal question at issue as the issues herein is based solely on
22 California Statutes and law including the California Labor Code, Industrial Welfare Commission
23 Wage Orders, Code of Civil Procedure, Rule of Court, and Business and Professions Code.

24 8. Further, there is no federal question at issue as the issues herein are based solely
25 on California statutes and law, including the California Labor Code, Industrial Welfare
26 Commission (IWC) Wage Orders, California Code of Civil Procedure, California Business and
27 Professions Code, and Rules of Court.

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1 **THE PARTIES**

2 **A. The Plaintiff**

3 9. Plaintiff, at relevant times herein, was an employee of the Defendant and entitled
4 to compensation for all hours worked, overtime compensation, and penalties from Defendant.
5 Plaintiff was employed by the Defendant from on or about January 7, 2014 through March 21,
6 2019, in the County of Los Angeles at various times herein relevant. Plaintiff filed notice of his
7 claims with the Labor and Workforce Development Agency (LWDA) on March 19, 2020 (LWDA
8 Case No. LWDA-CM-779277-20.) Each of the Aggrieved Employees are identifiable, current
9 and/or formerly similarly situated persons who were employed in non-exempt hourly positions
10 including, but not limited to, salespersons or other similar positions, in California for the
11 Defendant during the Liability Period.

12 **B. The Defendants**

13 10. Plaintiff is informed and believes, and based thereon alleges that, CAR AROMA
14 SUPPLIES, INC. ("Defendant") is a California corporation and is a retail seller of car wash and
15 detail supplies, including paint. Defendant is and/or was the employer of the Plaintiff and
16 Aggrieved Employees during the Liability Period. During the Liability Period, Defendant
17 employed Plaintiff and other Aggrieved Employees and failed to pay Plaintiff and Aggrieved
18 Employees for all hours worked including minimum wage, overtime premium for overtime hours
19 worked, failed to reimburse for necessary expenditures, failed to pay due and owing wages upon
20 ending of employment for employees within California, and failed to provide accurate itemized
21 wage statements. On information and belief, and based thereon, Plaintiff alleges that Defendant
22 is conducting business in good standing in California.

23 11. Plaintiff is ignorant of the true names, capacities, relationships and extent of
24 participation in the conduct herein alleged, of the Defendant sued herein as DOES 1 through 50,
25 inclusive, but on information and belief alleges that said Defendant is legally responsible for the
26 payment of overtime compensation, rest and meal period compensation and/or Labor Code
27 section 203 penalties to Plaintiff and Aggrieved Employees by virtue of their unlawful practices,
28 and therefore sue these Defendant by such fictitious names. Plaintiff will amend this complaint

1 to allege the true names and capacities of the DOE Defendant when ascertained.

2 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
3 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
4 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant
5 legally attributable to the other Defendants.

6 13. Plaintiff is informed and believes, and based thereon alleges, that each defendant
7 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
8 managing agent, and/or principal of the co-defendants, and in performing the actions mentioned
9 below was acting, at least in part, within the course and scope of that authority as such agent,
10 proxy, servant, partner, joint venture, single enterprise, joint employer employee, alter-ego,
11 managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff
12 also alleges the acts of each Defendant are legally attributable to the other defendants.

13 14. Plaintiff is informed and believes, and based thereon alleges, that each of the
14 Defendants sued herein was, at all relevant times hereto, the employer, owner, shareholder,
15 principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing
16 agent, joint employer and/or alter-ego of the remaining defendants, and was acting, at least in
17 part, within the course and scope of such employment and agency, with the express and implied
18 permission, consent and knowledge, approval and/or ratification of the other defendants. The
19 above co-defendants, managing agents, and supervisors aided, abetted, condoned, permitted,
20 approved, authorized and/or ratified the unlawful acts described herein.

21 **ADMINISTRATIVE PREREQUISITES**

22 15. By this complaint, Plaintiff brings this case as a representative action seeking
23 penalties for the State of California in a representative capacity, as provided by the Private
24 Attorney General Act, Labor Code section 2698 et seq. ("PAGA"), as an aggrieved employee
25 who was employed by Defendant and did not receive all wages due, was not paid minimum wage,
26 was not paid overtime, was not provided accurate wage statements, and was not reimbursed for
27 necessary expenditures.

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16. Prior to filing this Complaint, on March 19, 2020, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) (LWDA Case No. LWDA-CM-779277-20) and to Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code section 2699.3. A true and correct copy of Plaintiff’s letter sent to the LWDA, dated March 19, 2020, is attached hereto as “Exhibit A.”

17. “The statute of limitations on Plaintiff’s PAGA claims is one year. (*See Moreno v. Autozone, Inc.*, No. 05–04432–MJJ, 2007 WL 1650942, at *2) (N.D.Cal. June 5, 2007.)) PAGA itself provides that the statute of limitations is tolled while a plaintiff exhausts his administrative remedies with California’s Labor and Workforce Development Agency (LWDA) prior to suit, which is required by the statute. See Cal. Labor Code § 2699.3(d).” (*Ramirez v. Ghilotti Bros. Inc.*, 941 F.Supp.2d 1197, 1209 (2013.))

18. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause of action under PAGA only after giving notice to the Labor Workforce Development Agency (“LWDA”) and the employer of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice.

19. More than sixty-five (65) days have passed since Plaintiff submitted notice to the LWDA and Defendant of the specific alleged Labor Code violations and the LWDA has not provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff further has received no notice of Defendant's intent to cure any of the alleged violations. Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action.

GENERAL ALLEGATIONS

20. Plaintiff began his employment with Defendant on or about January 7, 2014. During the Liability Period, Plaintiff worked at Defendant's 412 W. Anaheim Street, Wilmington, California location.

21. California Labor Code section 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal overtime compensation or

1 minimum wage compensation is entitled to recover in a civil action the unpaid balance of their
2 overtime compensation and/or minimum wage compensation, including interest thereon,
3 reasonable attorneys' fees, and costs of suit.

4 22. During all, or a portion of the Relevant Period, Plaintiff and Aggrieved Employees
5 were employed by Defendants and each of them, in the State of California.

6 23. Plaintiff and each of the Aggrieved Employees were non-exempt employees
7 covered under one or more Industrial Welfare Commission (IWC) Wage Orders, and Labor Code
8 section 510, and/or other applicable wage orders, regulations and statutes, and each Aggrieved
9 Employees were not subject to an exemption for executive, administrative and professional
10 employees, which imposed obligations on the part of the Defendants to pay Plaintiff and
11 Aggrieved Employees lawful overtime compensation.

12 24. During the Liability Period, Plaintiff was a salesperson, assigned by Defendant to
13 drive a certain route to different carwash facilities in order to sell Defendant's car wash supplies.
14 Defendant provided Plaintiff with a work truck to make his deliveries.

15 25. At the beginning of Plaintiff's employment, he was paid a commission based on
16 5% - 10% of the cost of goods that he sold. In January 2018, Plaintiff began to work on Saturdays
17 at Defendant's warehouse, where he was paid a flat rate of \$130.00.

18 26. In or around August 2018, Plaintiff's work vehicle became inoperable, resulting
19 in Plaintiff having to use his own personal vehicle for work purposes. While Plaintiff's work
20 vehicle was inoperable, Plaintiff was assigned by Defendant to work in the office. During the
21 Liability Period, Plaintiff spent more than half his time working at Defendant's office from
22 August 2018 through March 2019, doing non-sales related tasks. During this time, Plaintiff job
23 duties included, re-stocking trucks, assisting in the sales of paint in Defendant's warehouse,
24 making calls to customers, and/or delivering supplies to other salespersons. From August 2018
25 through March 2019, Plaintiff's duties did not include making outside sales.

26 27. Plaintiff was paid by Defendant via company check, yet these wages were not
27 included in his wage statements or his W-2.

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1 28. During the Liability period, Defendant was obligated to pay Plaintiff and
2 Aggrieved Employees for all hours worked.

3 29. During the Liability period, Defendant was obligated to pay Plaintiff and
4 Aggrieved Employees minimum wages for all regular hours worked.

5 30. During the Liability period, Defendant was obligated to pay Plaintiff and
6 Aggrieved Employees overtime compensation for all hours worked over eight (8) hours of work
7 in one (1) day or forty (40) hours in one (1) week and double-time for hours worked in excess of
8 twelve (12) in one day.

9 31. Plaintiff and each Aggrieved Employee primarily performed non-exempt work in
10 excess of the maximum regular rate hours set by the IWC in the applicable Wage Orders,
11 regulations or statutes, and therefore entitled the Plaintiff and Aggrieved Employees to overtime
12 compensation at time and a half rate, and when applicable, double time rates as set forth by the
13 applicable Wage Orders, regulations and/or statutes.

14 32. Aggrieved Employees who ended their employment during the Liability period
15 but were not paid the above due compensation for all hours worked, including minimum wage
16 for regular hours and overtime compensation, timely upon the termination of their employment
17 as required by Labor Code sections 201, 202, and 203, are entitled to penalties as provided by
18 Labor Code section 203.

19 33. During the Liability Period, the Defendant required the Plaintiff and Aggrieved
20 Employees to work off the clock without lawful compensation in violation of the various
21 applicable Wage Orders, regulations and statutes, and the Defendant: (1) Willfully failed and
22 refused, and continues to fail and refuse to pay compensation for all hours worked, including
23 minimum wage and lawful overtime compensation to Plaintiff and Aggrieved Employees; and
24 (2) willfully failed and refused, and continue to fail and refuse to pay due and owing wages
25 promptly upon termination of employment to Plaintiff and Aggrieved Employees.

26 34. During the Liability Period, Defendant failed to authorize and/or permit Plaintiff
27 and Aggrieved Employees to take adequate meal and rest breaks. Plaintiff was not provided with
28 thirty (30) minute uninterrupted meal periods prior to their fifth hour of work. In addition, when

1 Plaintiff and Aggrieved Employees were permitted to take a meal break, it was routinely
2 interrupted due to inadequate coverage. However, Plaintiff and Aggrieved Employees never
3 received premium pay as compensation for the unlawful meal breaks.

4 35. Furthermore, during the Liability Period, Plaintiff and Aggrieved Employees
5 routinely did not receive a duty-free, uninterrupted rest break for every four (4) hours worked, or
6 major fraction thereof. Defendant failed to provide adequate coverage resulting in no relief which
7 prevented employees from taking their rest break. Again, Plaintiff and Aggrieved Employees
8 were never paid any premium pay for the missed and/or interrupted rest breaks.

9 36. During the Liability Period, Plaintiff and Aggrieved Employees were required to
10 wear a uniform shirt containing Defendant's company logo. Plaintiff and Aggrieved Employees
11 were required to launder these uniforms at their own expense and were never compensated by
12 Defendant. Also, Plaintiff and Aggrieved Employees were required to use their personal cellular
13 phones and vehicles for work-related purposes without proper reimbursement from Defendant.
14 Specifically, from August 2018 through March 2019, Plaintiff used his own personal vehicle to
15 make sales calls and deliveries, yet did not receive any reimbursement for gas or mileage.

16 37. Aggrieved Employees who ended their employment during the Liability Period,
17 but were not paid the above due overtime compensation or premium compensation timely upon
18 the termination of their employment as required by Labor Code sections 201, 202, 203, and are
19 entitled to penalties as provided by California Labor Code section 203.

20 **FIRST CAUSE OF ACTION**

21 **Violation of PAGA for Failure to Pay All Wages including Overtime**

22 **(Against All Defendants, DOES 1 through 50, and each of them)**

23 38. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
24 preceding paragraphs of this Complaint as if fully set forth herein.

25 39. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day
26 and forty (40) hours per week. Defendant failed to pay Plaintiff, and Aggrieved Employees
27 minimum wage for all hours worked and overtime premium for hours worked in excess of over
28 eight (8) hours per day and forty (40) hours per week for work performed for the Defendant.

1 Defendant failed to pay Plaintiff and Aggrieved Employees overtime premium for hours worked
2 in excess of eight (8) hours per day and forty (40) hours per week for work performed for
3 Defendant. As such Plaintiff and Aggrieved Employees seek overtime in an amount according
4 to proof. Pursuant to Labor Code section 1194, the Aggrieved Employees seek the payment of
5 all overtime compensation which they earned and accrued one (1) year prior to filing of Plaintiff's
6 administrative complaint to the LWDA, according to proof, as part of the civil penalty pursuant
7 to Labor Code section 558, subdivision (a). Defendant failed to include all remuneration when
8 calculating Plaintiff and Aggrieved Employees' regular rate for purposes of compensating
9 Plaintiff and Aggrieved Employees for overtime under Labor Code Labor Code section 510.

10 40. Defendant willfully violated the Labor Code by failing to pay Plaintiff and
11 Aggrieved Employees all wages including both minimum wage and overtime. Defendants have
12 regularly violated the Labor Code with respect to meeting the requirements of paying wages
13 earned, including, overtime, double-time and remuneration when calculating the employee's
14 regular rate of pay, as herein before alleged. Defendant intentionally excluded remuneration that
15 must be included in all employees' regular rate of pay in order to avoid payment of overtime
16 wages and other benefits in violation of the Labor Code and the order issued by the IWC.
17 Thereby, Defendant is able to reduce its overhead and operating expenses and gain an unfair
18 advantage over competing businesses who comply with state law.

19 41. Since the LWDA has not indicated that it will be investigating and more than 65
20 days have passed since Plaintiff mailed his letter, and because Defendant took no corrective action
21 to remedy the allegations set forth above, Plaintiff, as a representative of the people of the State
22 of California, will seek any and all penalties otherwise capable of being collected by the Labor
23 Commission, the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This
24 includes each of the following, as set forth in Labor Code section 2699.5, which provides that
25 section 2699.3, subdivision (a) applies to any alleged violation of the following provisions: 510
26 and 1194.

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1 42. Plaintiff is informed and believes that Defendant has violated and continues to
2 violate provisions of the California Labor Code and applicable Wage orders related to the
3 payment of minimum wages including overtime.

4 43. Plaintiff, as a personal representative of the general public, will and does seek to
5 recover any and all penalties for each and every violation shown to exist or to have occurred
6 during the Liability period, in an amount according to proof, as to those penalties that are
7 otherwise only available to public agency enforcement actions. Funds recovered will be
8 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
9 reimbursed to the LWDA.

10 44. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
11 and costs pursuant to Labor Code sections 2699(g)(1), 218.5, 1194, and prejudgment interest.

12 **SECOND CAUSE OF ACTION**

13 **Violation of PAGA for Failure to Provide Meal Periods, in Violation of Labor Code**

14 **Sections 226.7 and 512**

15 **(Against All Defendants, DOES 1 through 50, and each of them)**

16 45. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
17 preceding paragraphs of this Complaint as if fully set forth herein.

18 46. California Labor Code section 226.7, subdivision (b) in relevant part, provides,
19 "An employer shall not require an employee to work during a meal or rest or recovery period
20 mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the
21 Industrial Welfare Commission."

22 47. California Labor Code section 512, subdivision (a) in relevant part, provides, "An
23 employer may not employ an employee for a work period of more than five (5) hours per day
24 without providing the employee with a meal period of not less than 30 minutes." Defendants
25 regularly failed to provide Plaintiff and other employees one thirty (30)-minute uninterrupted
26 meal period for shifts lasting longer than five (5) hours. Defendant intentionally and improperly
27 denied meal periods to Plaintiff and Aggrieved Employees in violation of Labor Code sections
28 226.7 and 512 and other regulations and statutes.

1 48. Defendant imposed upon Plaintiff and other employees daily work duties which
2 were sufficiently and regularly numerous such that Plaintiff and Aggrieved Employees could not
3 complete their duties and still take legally compliant meal periods.

4 49. Additionally, Defendant required Plaintiff and other employees to prioritize
5 continuing to perform work duties ahead of legally compliant meal periods.

6 50. Defendant imposed such an amount of work upon Plaintiff and Aggrieved
7 Employees on a daily basis that Plaintiff and Aggrieved Employees regularly and frequently
8 experienced missed, delayed or interrupted meal periods.

9 51. Under section 226.7, subdivision (c), an employer who violates section 226.7,
10 subdivision (b), "shall pay the employee one (1) additional hour of pay at the employee's regular
11 rate of compensation for each workday that the meal or rest or recovery period is not provided."

12 52. Defendant failed to pay Plaintiff one (1) additional hour of pay at Plaintiff's
13 regular rate of compensation for each day a meal period was not provided to him. On information
14 and belief, Defendant failed to pay other Aggrieved Employees one (1) additional hour of pay at
15 their regular rate of compensation for each day a meal period was not provided to them.

16 53. By virtue of the Defendant's failure to schedule Plaintiff and Aggrieved
17 Employees in such a way as to provide meal periods, and/or work free meal periods to Plaintiff
18 and Aggrieved Employees, and/or to provide on-duty meal periods in accordance with the
19 applicable Wage Order, thereby causing Plaintiff and Aggrieved Employees to suffer, and will
20 continue to suffer, damages in the amounts which are presently unknown, but which exceed the
21 jurisdictional limits of this Court and which will be ascertained according to proof at trial.

22 54. Plaintiff individually, and on behalf of the Aggrieved Employees, requests
23 recovery of meal period compensation pursuant to Labor Code section 226.7 which they are owed
24 beginning one (1) year prior to filing this Complaint as well as the assessment of any statutory
25 penalties against Defendant in a sum as provided by the Labor Code and/or other statutes.

26 55. Since the LWDA has not indicated that it will be investigating and 65 days have
27 passed since Plaintiff mailed his letter, and because Defendant took no corrective action to remedy
28 the allegations set forth above, Plaintiff, as a representative of the people of the State of California,

1 will seek any and all penalties otherwise capable of being collected by the Labor Commission,
2 the LWDA and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each
3 of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,
4 subdivision (a) applies to any alleged violation of the following provisions: 512.

5 56. Plaintiff is informed and believes that Defendant has violated and continues to
6 violate provisions of the California Labor Code and applicable Wage orders related to the
7 providing of meal periods and compensation in lieu thereof.

8 57. Plaintiff, as a personal representative of the general public, will and does seek to
9 recover any and all penalties for each and every violation shown to exist or to have occurred
10 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
11 otherwise only available to public agency enforcement actions. Funds recovered will be
12 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
13 reimbursed to the LWDA.

14 58. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees
15 and costs pursuant to Labor Code sections 2699, subdivision (g)(1), and prejudgment interest.

16 **THIRD CAUSE OF ACTION**

17 **Violation of PAGA for Failure to Provide Rest Periods, in Violation of California Labor** 18 **Code Section 226.7**

19 **(Against All Defendants, DOES 1 through 50, and each of them)**

20 59. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
21 preceding paragraphs of this Complaint as if fully set forth herein.

22 60. California Labor Code section 226.7, subdivision (b) in relevant part, provides,
23 “An employer shall not require an employee to work during a meal or rest or recovery period
24 mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the
25 Industrial Welfare Commission.”

26 61. Under IWC Wage Order, Defendants were required to provide Plaintiff and other
27 employees one (1) rest period for every four (4) hours, or major fraction thereof, worked.

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1 62. Defendant imposed upon Plaintiff and other employees daily work duties which
2 were sufficiently and regularly numerous such that Plaintiff and other employees could not
3 complete their duties and still take legally compliant rest periods.

4 63. Additionally, Defendant required Plaintiff and Aggrieved Employees to prioritize
5 continuing to perform work duties ahead of legally compliant rest periods.

6 64. Defendant imposed such an amount of work upon Plaintiff and other employees
7 on a daily basis that Plaintiff and other employees regularly and frequently experienced missed,
8 delayed or interrupted rest periods.

9 65. Under section 226.7, subdivision (c), an employer who violates section 226.7,
10 subdivision (b), "shall pay the employee one (1) additional hour of pay at the employee's regular
11 rate of compensation for each workday that the meal or rest or recovery period is not provided."

12 66. Defendant failed to pay Plaintiff one (1) additional hour of pay at Plaintiff's
13 regular rate of compensation for each day a rest period was not provided to him. On information
14 and belief, Defendant failed to pay other Aggrieved Employees one (1) additional hour of pay at
15 their regular rate of compensation for each day a rest period was not provided to them.

16 67. At all times relevant hereto, Plaintiff and Aggrieved Employees, have worked
17 more than four (4) hours in a workday.

18 68. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
19 and Aggrieved Employees as a result of their scheduling and non-compliant shift relief system,
20 Plaintiff and Aggrieved Employees have suffered, and will continue to suffer, damages, in
21 amounts which are presently unknown, but which exceed the jurisdictional limits of this Court
22 and which will be ascertained according to proof at trial.

23 69. Plaintiff by virtue of Plaintiff's employment with Defendant, Defendant's failure
24 to provide Plaintiff and Aggrieved Employees with rest breaks, and Defendant's policy of
25 requiring employees to work through their rest periods without receiving compensation in lieu
26 thereof, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has
27 satisfied all prerequisites to serve as a representative of the general public to enforce California's
28 labor laws, and the penalty provisions identified in Labor Code section 2699.5.

1 70. Plaintiff, as a representative of the people of the State of California, will seek any
2 and all penalties otherwise capable of being collected by the Labor Commission, the LWDA
3 and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5,
4 which provides that section 2699.3, subdivision (a) applies to any alleged violation of the
5 following provisions: 226.7.

6 71. Plaintiff, as a personal representative of the general public, will and does seek to
7 recover any and all penalties for each and every violation shown to exist or to have occurred
8 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
9 otherwise only available to public agency enforcement actions. Funds recovered will be
10 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
11 reimbursed to the LWDA.

12 72. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
13 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

14 **FOURTH CAUSE OF ACTION**

15 **Violation of PAGA for Failure to Pay Wages of Terminated or Resigned Employees**

16 **Cal. Labor Code §§ 201-203**

17 **(Against All Defendants, DOES 1 through 50, and each of them)**

18 73. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
19 preceding paragraphs of this Complaint as if fully set forth herein.

20 74. Under California Labor Code section 203, subdivision (a), "If an employer
21 willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3,
22 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the
23 wages of the employee shall continue as a penalty from the due date thereof at the same rate until
24 paid or until an action therefore is commenced; but the wages shall not continue for more than
25 thirty (30) days."

26 75. Plaintiff and certain members of the Aggrieved Employees who ended their
27 employment with Defendant during the Liability period, were entitled to be promptly paid both
28 minimum wage and lawful overtime compensation and other premiums, as required by Labor

1 Code sections 201, 202, and 203.

2 76. Defendant failed to compensate Plaintiff and, on information and belief, other
3 employees, wages earned and due to them at the time, and after, they were discharged or quit.

4 77. Defendant further failed to pay the penalties required by section 203 for each day
5 it owed these former employees wages.

6 78. Plaintiff by virtue of his employment with Defendant is an aggrieved employee
7 with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve
8 as a representative of the general public to enforce California's labor laws, and the penalty
9 provisions identified in Labor Code section 2699.5.

10 79. Plaintiff, as a representative of the people of the State of California, will seek any
11 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
12 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
13 that section 2699.3, subdivision (a) applies to any alleged violation of the following provisions:
14 201-203, 226, 226.7, 510, 512, 1174, and 1194.

15 80. Plaintiff, as a personal representative of the general public, will and does seek to
16 recover any and all penalties for each and every violation shown to exist or to have occurred
17 during the Liability period, in an amount according to proof, as to those penalties that are
18 otherwise only available to public agency enforcement actions. Funds recovered will be
19 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
20 reimbursed to the LWDA.

21 81. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
22 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

23 **FIFTH CAUSE OF ACTION**

24 **Violation of PAGA for Failure to Provide Accurate Wage Statements**

25 **Cal. Labor Code § 1174 And 226 (A), (E)**

26 **(Against All Defendants, DOES 1 through 50, and each of them)**

27 82. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
28 preceding paragraphs of this Complaint as if fully set forth herein.

1 83. Labor Code section 226, subsection (a) states in pertinent part that, “every
2 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
3 employees, either as a detachable part of the check, draft, or voucher paying the employee’s
4 wages, or separately when wages are paid by personal check or cash, an accurate itemized
5 statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee;
6 (3) the number of piece-rate units earned,(4) all deductions; (5) net wages; (6) the inclusive dates
7 of the period for which the employee is paid; (7) the name of the employee and only the last four
8 digits of his or her social security number or an employee identification number other than a social
9 security number; (8) the name and address of the legal entity that is the employer; and (9) all
10 applicable hourly rates in effect during the pay period and corresponding number of hours worked
11 at each hourly rate by the employee” (Lab. Code, § 226.)

12 84. Defendant knowingly and intentionally failed to provide timely, accurate itemized
13 wage statements to Plaintiff and Aggrieved Employees in accordance with California Labor Code
14 section 226, subsection (a) by failing to record the accurate number of hours worked, the accurate
15 rate of pay for each hour worked, the accurate amount of premium wages earned, the accurate net
16 pay, and the accurate gross pay. Defendant failed to include all remuneration when calculating
17 Plaintiff and Aggrieved Employees’ regular rate for purposes of compensating Plaintiff’s and
18 Aggrieved Employees’ overtime on their wage statement. Such failure caused injury to Plaintiff
19 and Aggrieved Employees.

20 85. Plaintiff and Aggrieved Employees are entitled to, and do hereby seek, injunctive
21 relief requiring Defendant to comply with Labor Code section 226 subsection (a) and the greater
22 of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs
23 and one-hundred (\$100.00) per employee for each violation in each subsequent pay period,
24 pursuant to Labor Code section 226 subsection (e).

25 86. Plaintiff by virtue of his employment with Defendant is an aggrieved employee
26 with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve
27 as a representative of the general public to enforce California’s labor laws, and the penalty
28 provisions identified in Labor Code section 2699.5.

87. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a) applies to any alleged violation of the following provisions: 201-203, 226, 226.7, 510, 512, 1174, 2802, and 1194.

88. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Liability period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

89. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699(g)(1), and prejudgment interest.

SIXTH CAUSE OF ACTION

Violation of PAGA for Failure to Reimburse for Necessary Expenditures

Cal. Labor Code § 2802

(Against All Defendants, DOES 1 through 50, and each of them)

90. Plaintiff and Aggrieved Employees reallege and incorporate by reference the preceding paragraphs of this Complaint as if fully set forth herein.

91. California Labor Code section 2802 states, “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties”

92. Plaintiff and the Aggrieved Employees were not reimbursed by Defendant for necessary expenditures as a direct consequence of the discharge of their duties.

93. Defendant knowingly, willingly and intentionally attempted to offset the cost of doing business on the Plaintiff and Aggrieved Employees.

94. Defendant has a practice and policy of requiring Plaintiff and Aggrieved Employees to shoulder the burden of Defendant's cost of doing business by failing to reimburse

1 Plaintiff and Aggrieved Employees for necessary business expenditures, specifically the cost of
2 wash and maintenance of their work uniforms, which contain Defendant's logo at their own
3 expense. Plaintiff and Aggrieved Employees had to wash their uniforms separate from their
4 personal clothing because of their uniforms were heavily soiled as a result of carrying out their
5 job duties. Defendant failed to reimburse Plaintiff and Aggrieved Employees for the cost of
6 washing and maintaining Defendant's uniform, which is required in their employment.
7 Additionally, Defendant failed to reimburse Plaintiff and Aggrieved Employees for the use of
8 their personal vehicles to perform work-related tasks, as well as usage of their personal cellular
9 phones. Defendant failed to reimburse Plaintiff and Aggrieved Employees for these expenditures
10 incurred in carrying out their job duties by Plaintiff and Aggrieved Employees under Defendant's
11 policy.

12 95. Accordingly, Plaintiff and Aggrieved Employees are entitled to an award of
13 "necessary expenditures or losses" shall include all reasonable costs, including, but not limited
14 to, attorney's fees and interest.

15 96. Plaintiff by virtue of his employment with Defendant and Defendant's policy of
16 requiring Plaintiff and Aggrieved Employees to shoulder the burden of Defendant's cost of doing
17 business by failing to reimburse Plaintiff and Aggrieved Employees for necessary expenditures,
18 is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied
19 all prerequisites to serve as a representative of the general public to enforce California's labor
20 laws, and the penalty provisions identified in Labor Code section 2699.5.

21 97. Plaintiff, as a representative of the people of the State of California, will seek any
22 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
23 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
24 that section 2699.3, subdivision (a) applies to any alleged violation of the following provisions:
25 201, 202, 203, 226, 226.7, 510, 512, 1174, 2802, and 1194.

26 98. Plaintiff, as a personal representative of the general public, will and does seek to
27 recover any and all penalties for each and every violation shown to exist or to have occurred
28 during the Liability period, in an amount according to proof, as to those penalties that are

1 otherwise only available to public agency enforcement actions. Funds recovered will be
2 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
3 reimbursed to the LWDA.

4 99. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
5 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, the Plaintiff prays for judgment as follows:

- 8 1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee as
9 provided by law, including but not limited to, those civil penalties provided by
10 statute, provided by PAGA and for unpaid wages pursuant to Labor Code section
11 558;
- 12 2. For costs of suit and expenses incurred herein pursuant to Labor Code sections 2699,
13 subdivision (g) and any other statutory basis or pursuant to the California Rules of
14 Court;
- 15 3. For reasonable attorneys' fees pursuant to Labor Code sections 2699, subdivision (g)
16 and any other statutory basis, and;
- 17 4. For all such other and further relief as the Court may deem just and proper.
- 18

19 Dated: June 11, 2020

MAHONEY LAW GROUP, APC

20
21 /s/ Atoy H. Wilson

Kevin Mahoney

Atoy H. Wilson

22 Attorneys for Plaintiff LUIS GARCIA,
23 individually and on behalf of all Aggrieved
24 Employees

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Dated: June 11, 2020

/s/ Atoy H. Wilson
Kevin Mahoney
Atoy H. Wilson
Attorneys for Plaintiff LUIS GARCIA,
individually and on behalf of all Aggrieved
Employees

EXHIBIT A



Kevin Mahoney, Esq.
(562) 590-5550 phone
(562) 590-8400 facsimile
kmahoney@mahoney-law.net

March 19, 2020

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAFilings@dir.ca.gov

VIA U.S. MAIL & CERTIFIED MAIL# 7019 2280 0002 0214 7058

Return Receipt Requested

Car Aroma Supplies, Inc.
412 W. Anaheim Street
Wilmington, CA 90744

VIA U.S. MAIL & CERTIFIED MAIL# 7019 2280 0002 0214 7065

Return Receipt Requested

Agent for Service
Thomas Umbrell
412 W. Anaheim Street
Wilmington, CA 90744

VIA U.S. MAIL & CERTIFIED MAIL# 7019 2280 0002 0214 7072

Return Receipt Requested

Carothers DiSante & Freudenberger LLP
Attn: Brian Cole II
18300 Von Karman Avenue, Suite 800
Irvine, CA 92612

Re: Luis Garcia v. Car Aroma Supplies, Inc.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency; Car Aroma Supplies, Inc.

From: Luis Garcia, on behalf of himself and other Aggrieved Employees who were subject to the Employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. Luis Garcia ("Mr. Garcia" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Car Aroma Supplies, Inc., a California corporation (hereinafter "Employer") is a retail seller of car wash and detail supplies, as well as paint. Mr. Garcia began his employment with Employer in or around January 7, 2014 as a commissioned salesman at Employer's 412 W. Anaheim Street, Wilmington, California location, where he remained employed until on or about March 21, 2019.

At the beginning of Mr. Garcia's employment, he was paid commission based on 10% of the cost of the goods that he sold for some items, and 5% for other items. In or around January 2018, Mr. Garcia began to work Saturdays at Employer's warehouse for flat pay of \$130 a day. Mr. Garcia was paid by a manual company check for this work, and these wages were not included in his wage statements or W-2s. In or around August 2018, the work truck that Mr. Garcia used to make sales calls to customers broke and the company was not able to fix it. Thereafter, Mr. Garcia worked from 7:00 am to 12:00 pm each day at Employer's warehouse doing a number of non-sales related duties. In the afternoons Mr. Garcia would utilize his personal vehicle to deliver goods to customers. Mr. Garcia lost sales during this time because he was not able to fit the same number and size of goods in his personal vehicle that he could in the work truck. He was not paid any type of hourly wage for his time spent working in the warehouse. Mr. Garcia never received overtime pay, rest breaks or meal breaks, including for his non-commissioned Saturday work and his warehouse work.

Mr. Garcia alleges Employer violated various sections of the Labor Code, including sections 201, 202, 203, 226, 226.7, 227.3, 510, 512, 1174, 1194, and 2802, by failing to provide Mr. Garcia and all other aggrieved employees with meal and rest periods and premium pay, failing to pay all wages owed, including minimum wage and overtime, failing to provide lawful meal and rest periods, failing to provide accurate wage statements and maintain accurate payroll records, and failing to provide all wages earned at end of employment. Mr. Garcia and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer in non-exempt positions in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

Employer failed to pay Mr. Garcia and other aggrieved employees for all hours worked at the legally mandated wage rates. Throughout Mr. Garcia's employment, Employer failed to compensate Mr. Garcia and Aggrieved Employees for all hours worked including, overtime, and double-time overtime wages. Employer also failed to pay minimum wage during the time in which PC was exempt.

In addition, Employer failed to authorize and/or permit Mr. Garcia and Aggrieved Employees to take adequate meal or rest breaks in violation of the Labor Code. Specifically, Mr. Garcia and Aggrieved Employees were not provided full thirty (30) minute uninterrupted meal periods prior to their (5th) fifth hour of work when he worked in excess of six (6) hours. Further, Mr. Garcia and Aggrieved Employees' meal periods were routinely interrupted due to inadequate coverage. When employees were prevented from taking timely and uninterrupted meal periods, they did not receive premium pay as compensation for the unlawful meal periods. Due to these discrepancies with Mr. Garcia and Aggrieved Employees meal breaks, as a result Employer also did not provide Mr. Garcia and other Aggrieved Employees with accurate wage statements.

Mr. Garcia further alleges that he and other Aggrieved Employees often did not receive at least one duty-free, uninterrupted rest period for every four (4) hours worked, or major fraction thereof, as required by the Labor Code. Mr. Garcia and other Aggrieved Employees were generally precluded from taking rest periods due to Employers' failure to sufficiently staff shifts to provide relief and thereby allow Mr. Garcia and other Aggrieved Employees the opportunity to take rest breaks. When employees were prevented from taking timely, uninterrupted rest breaks, they did not receive premium pay for the missed rest breaks.

Mr. Garcia alleges that he and other aggrieved employees were not compensated with premium pay for every meal period and rest period that was not provided. Employer's conduct is actionable under PAGA as violations of Labor Code sections 226.7 and 512.

Mr. Garcia and other Aggrieved Employees were required to pay for necessary business expenditures, for which Employer did not compensate them. Mr. Garcia and other Aggrieved Employees were required to wear a uniform shirt containing the company logo. Mr. Garcia had to bear the expense of laundering his uniform and did not receive any type of compensation from Employer. On occasion, Mr. Garcia and other Aggrieved Employees also had to use their personal cell phones and vehicles for business matters without reimbursement. From August 2018 – March 2019, Mr. Garcia used his personal vehicle for sales calls and to make deliveries without any type of mileage or gas reimbursement from Employer. Throughout his employment, Mr. Garcia and Aggrieved Employees were required to frequently use their personal cell phone for work without reimbursement. Employer's failure to provide full and complete reimbursement for all necessary business expenditures incurred by Mr. Garcia and other Aggrieved Employees is in violation of Labor Code 2802 and actionable under PAGA.

As a result of Employer's failure to pay all wages owed as described herein, Employer further failed to keep accurate payroll records and failed to provide Mr. Garcia and other Aggrieved Employees with complete and accurate wage statements showing the actual hours worked and premium wages earned per pay period. This conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

By failing to include on Mr. Garcia's and other Aggrieved Employees' pay stubs, all rest and meal break premium wages, and full compensation for all hours worked, Employers failed to keep accurate payroll records and failed to provide Mr. Garcia and other Aggrieved Employees with complete and accurate wage statements with the accurate number of hours worked, accurate

March 19, 2020

Page 4 of 4

rate of pay for each hour worked, accurate number of premium wage earned, accurate reimbursements owed, and accurate net and gross wages earned. This conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

As a further result of Employers' failure to pay all wages owed as described herein, Employers also violated Labor Code sections 201, 202, and 203, due to its uniform policy, practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Garcia becomes aware of additional compensation owed or losses incurred by Mr. Garcia or by any other Aggrieved Employee of the Employer, Mr. Garcia expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Mr. Garcia will bring his lawsuit on behalf of himself and all other Aggrieved Employees who were employed by Employer. Please advise Mahoney Law Group at the address below if the LWDA has any objection to my client including PAGA claims in his complaint. We look forward to your response, and please feel free to contact our office if you have any questions, comments or concerns.

Mahoney Law Group, APC
Kevin Mahoney
249 E. Ocean Blvd., Suite 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: kmahoney@mahoney-law.net

Sincerely,



Kevin Mahoney, Esq.
MAHONEY LAW GROUP, APC