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JORGE NAVARRETE on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE, PALM SPRINGS COURTHOUSE

JORGE NAVARRETE, on behalf of himself,
all aggrieved employees, and the State of CA
as a Private Attorneys General,

Plaintiffs,

vs.

SHOTTENKIRK-CALIFORNIA, LLC, dba
SHOTTENKIRK DESERT LEXUS, a CA
limited liability company, and DOES 1-50,
inclusive,

Defendants.

Case No.: **PSC2002783**

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

Plaintiff JORGE NAVARRETE brings this PAGA representative action complaint on
behalf of himself, all aggrieved employees, and the State of California as a Private Attorneys
General, and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff JORGE NAVARRETE worked as a salesperson for defendant SHOTTENKIRK-CALIFORNIA, LLC, dba SHOTTENKIRK DESERT LEXUS and Does 1-50 (collectively “Defendants”). Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former employees of Defendant within one year of serving notice on the LWDA to the present are aggrieved employees.

2. Defendants failed to comply with California Labor Code requirements due to erroneous, willful and intentional employment practices and policies. Plaintiff brings this representative action on behalf of himself, all other similarly situated aggrieved employees, and the State of California, based upon the claims articulated below. Plaintiff provided notice of his claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as illustrated by the attached Exhibit. The LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice period required by §2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for all hours worked, including overtime hours worked; (2) failing to timely pay all wages owed; (3) failing to provide complaint off-duty meal breaks; (4) failing to provide rest breaks; (5) failing to comply with California sick pay requirements; (6) failing to reimburse for required business expenses; and (7) failing to provide accurate wage statements and maintain accurate payroll records. Defendants are therefore liable for civil penalties under the Cal. Labor Code, including the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described more fully herein.

THE PARTIES

7. Plaintiff JORGE NAVARRETE is a resident of the State of California and was employed as an hourly, nonexempt employee of Defendants from 2017 through May of 2019.

NATURE OF THE ACTION

1
2 1. Plaintiff JORGE NAVARRETE worked as a salesperson for defendant
3 SHOTTENKIRK-CALIFORNIA, LLC, dba SHOTTENKIRK DESERT LEXUS and Does 1-50
4 (collectively “Defendants”). Plaintiff brings this action pursuant to the Private Attorneys General
5 Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and
6 former employees of Defendant within one year of serving notice on the LWDA to the present
7 are aggrieved employees.

8 2. Defendants failed to comply with California Labor Code requirements due to
9 erroneous, willful and intentional employment practices and policies. Plaintiff brings this
10 representative action on behalf of himself, all other similarly situated aggrieved employees, and
11 the State of California, based upon the claims articulated below. Plaintiff provided notice of his
12 claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency
13 (“LWDA”) as illustrated by the attached Exhibit. The LWDA has not provided any notice to
14 Plaintiff following the exhaustion of the 65-day notice period required by §2699.3(a)(2)(B).
15 Accordingly, Plaintiff now brings this Complaint for civil penalties under the Private Attorneys
16 General Act (“PAGA”), Labor Code §2698 *et seq.*

17 3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for all
18 hours worked, including overtime hours worked; (2) failing to timely pay all wages owed; (3)
19 failing to provide complaint off-duty meal breaks; (4) failing to provide rest breaks; (5) failing to
20 comply with California sick pay requirements; (6) failing to reimburse for required business
21 expenses; and (7) failing to provide accurate wage statements and maintain accurate payroll
22 records. Defendants are therefore liable for civil penalties under the Cal. Labor Code, including
23 the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described more fully
24 herein.

THE PARTIES

25
26 7. Plaintiff JORGE NAVARRETE is a resident of the State of California and was
27 employed as an hourly, nonexempt employee of Defendants from 2017 through May of 2019.
28

1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

2 14. During the relevant time-period, Defendants committed various violations of the
3 California Labor Code as alleged below in more detail. Defendants enforce multiple policies that
4 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

5 15. Defendant SHOTTENKIRK-CALIFORNIA, LLC, dba SHOTTENKIRK DESERT
6 LEXUS, is a car dealership. This representative action represents dozens of current and former
7 aggrieved employees.

8 16. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
9 to the present, Defendants engaged in unlawful employment practices that resulted in violations of
10 numerous Labor Code sections, as set forth more fully below.

11 17. Plaintiff and all current and former employees within one year of filing this action to
12 the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor
13 code §2699(c).)

14 18. Defendants, and each of them, have committed the following violations of the
15 California Labor Code:

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

17 (Cal. Labor Code §§218, 510, 1194, 1197, 1198, 2698 *et seq.*)

18 19. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 20. Section 2(K) of Wage Order 5 defines “hours worked” as “the time during which an
21 employee is subject to the control of an employer, and including all the time the employee is
22 suffered or permitted to work, whether or not required to do so.” When employees like Plaintiff
23 and aggrieved employees earning at or near minimum wage do not receive payment for all hours
24 worked, including time shaved from their timecards due to employer rounding, the result is that
25 they are earning less than the statutory minimum wages for all hours worked. Defendants have
26 been engaged in many unlawful employment practices which resulted in underpayment for hours
27 worked each pay period, including penalty pay and overtime hours worked, as more fully set
28 forth below:

1 21. Work Performed During Unpaid Rest and Recovery Periods. Defendants failed to pay
2 Plaintiffs for “Rest Period Supplements” at the correct rate. Defendants calculate the amount
3 owed to each employee using a standard formula. For every day worked between 3.5-6 hours, the
4 employee is paid \$2.50 as compensation for the paid break period. For every day worked
5 between 6-10 hours, where employees would be entitled to two breaks, employees are paid \$5.00
6 as compensation for paid rest breaks. For every day worked between 10-14 hours, employees are
7 paid \$7.50 to account for two rest periods paid at the regular rate, and one at overtime. However,
8 these amounts are computed based upon an employee earning minimum wage, and they are the
9 same every week. Defendant is underpaying commission employees for rest and recovery period
10 time by paying a set amount regardless of the employee’s regular hourly rate, as required.
11 Pursuant to Labor Code 226.2 (a)(3)(A), rest recovery periods must be paid at the employee’s
12 regular hourly rate, which is determined by dividing the total amount of compensation for the
13 workweek by the hours work, excluding rest and recovery periods.¹

14 22. Failure to Pay Overtime Wages. As a result of Defendants using an incorrect rate to
15 calculate the employee’s regular rate for purposes of calculating overtime, Defendants have
16 incorrectly calculated and underpaid Plaintiff and aggrieved employees for overtime worked.
17 Defendants have required Plaintiff and employees to work in excess of eight hours in a day and
18 forty hours in a week, but has not paid these employees overtime compensation at one and one-
19 half times the correct **regular rate of pay** in violation of Labor Code §510. Further, Plaintiff and
20 employees have been required to work in excess of 12 hours in one day without being
21 compensated at a rate of twice the regular rate of pay. §510. As a result, Plaintiff and others have
22 been denied “the unpaid balance of the full amount of this . . . overtime compensation” as
23
24

25 1 Labor Code Section 226.2 (a)(3)(A): Employees shall be compensated for rest and recovery
26 periods at a regular hourly rate that is no less than the higher of:
27 (i) An average hourly rate determined by dividing the total compensation for the workweek,
28 exclusive of compensation for rest and recovery periods and any premium compensation for
overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.
(ii) The applicable minimum wage.

1 required by Cal. Labor Code §1194. Defendants are liable for civil penalties pursuant to Labor
2 Code §2699 *et seq.*

3 23. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to pay
4 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant
5 to Labor Code § 204(a). Defendants failed to pay all wages earned to employees as a result of the
6 unlawful employment policies and practices discussed herein. As a result of these practices,
7 aggrieved employees were underpaid for hours worked, including overtime and rest recovery
8 period wages, and this underpayment resulted in a failure to pay all wages owed twice per
9 month.

10 24. Work Performed During Unpaid Meal Periods. As more fully set forth below,
11 Defendants failed to permit Plaintiff and aggrieved employees to take timely, off-duty, first and
12 second meal breaks of “not less than 30 minutes” for each five consecutive hours of work in
13 violation of Labor Code §§ 226.7 and 512. Plaintiff was either denied required breaks, was
14 forced to work through breaks, or was interrupted with work during required meal periods.
15 Plaintiff has also been employed under conditions prohibited by the wage order, and thus
16 Defendants have violated §1198. Defendants are liable for civil penalties pursuant to Labor Code
17 §§558 and 2699 *et seq.*

18 **Failure to Timely Pay Final Wages**

19 (Cal. Labor Code §§201, 202, 203, 558, and 2698 *et seq.*)

20 25. Defendants knowingly and willfully failed to pay all compensation due and owing to
21 Plaintiff and aggrieved employees at the time employment terminated, including a lack of
22 compensation for all hours worked, rest recovery periods and overtime. Defendants willfully
23 failed to pay employees who are no longer employed by it all compensation due upon
24 termination of employment as required by Cal. Lab. Code §§201 and 202.

25 26. Pursuant to §203, Plaintiff and similarly situated individuals are now also entitled to
26 recover up to thirty (30) days of wages due to Defendants’ “willful” failure to comply with the
27 statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Defendants
28

1 violated §§201, 202 and 203, Defendants are liable for civil penalties pursuant to Cal. Lab. Code
2 § 2698 *et. seq.*

3 27. Defendants were required to pay Plaintiff and aggrieved employees all wages earned
4 twice during each calendar month pursuant to Labor Code §204(a). Defendants failed to pay all
5 wages earned to employees as a result of the unlawful employment policies and practices
6 discussed herein. As a result of these practices, aggrieved employees were underpaid for hours
7 worked, including overtime and rest recovery period wages, and this underpayment resulted in a
8 failure to pay all wages owed twice per month.

9 **§558 Civil Penalty for Violation of §512 Meal Break Requirements**

10 (Civil Penalties under Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

11 28. Plaintiff reasserts and alleges all preceding paragraphs as if fully set forth and
12 incorporate said paragraphs herein by reference.

13 29. Defendants prohibited all of its hourly employees from taking uninterrupted 30-
14 minute meal breaks and required rest breaks during work hours. Labor Code § 512 provides,
15 “[an] employer may not employ an employee for a work period of more than five hours per day
16 without providing the employee with a meal period of not less than 30 minutes . . .” Labor Code
17 §226.7(a) provides, “[n]o employer shall require an employee to work during any meal . . .
18 period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11(A)
19 of the Wage Order provides, in pertinent part, “[u]nless an employee is relieved of all duty
20 during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period
21 and counted as time worked.” Labor Code §1198 makes it unlawful for an employer to employ
22 an employee for longer hours than those fixed by the wage order or under conditions of labor
23 prohibited by the order.

24 30. Plaintiff reports that he almost never took a lunch period due to the press of work. He
25 and his coworkers were required to always be available for customers to make a sale. On the rare
26 occasions when he was able to take a lunch, Plaintiff states they were interrupted or cut short.
27 Further, Plaintiff and his coworkers never received a second meal period.

28 31. Defendants failed to permit Plaintiff and aggrieved employees to take timely, off-
duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in

1 violation of Labor Code §§226.7 and 512. Moreover, because Defendants' failure to provide
2 meal periods violates a Wage Order, Defendants are liable under Labor Code § 1998. As a
3 derivative claim, Plaintiff and aggrieved employees allege that pay statements were inaccurate,
4 failing to include required meal period penalties, thus failing the requirements of Labor Code
5 §226(a). As a result of these violations, Defendants are liable for civil penalties pursuant to Cal.
6 Labor Code §558 and §2698 *et. seq.*

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

13 33. Plaintiff seeks penalties pursuant to Labor Code §558 in this representative action for
14 each violation of Labor Code §226.7. Further, as a derivative claim for failing to pay the
15 premium pay of one (1) hour of pay at the employee's regular rate of compensation for each
16 workday that the meal period is not provided, Plaintiff will seek statutory penalties under Labor
17 Code §226(a)(1) because the failure to pay such premium wages rendered gross pay calculations
18 inaccurate in violation of Labor Code §226(e)(2)(B)(i).

19 **Failure to Provide Rest Breaks**

20 (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

21 34. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
22 incorporate said paragraphs herein by reference.

23 35. Defendants have failed to maintain a compliant rest period policy and practice that
24 provides its employees with off-duty rest periods as required by California law. Plaintiff and
25 aggrieved employees regularly worked in excess of four hours, or a major fraction thereof,
26 during work days without being provided any rest break, despite the fact that employees are
27 entitled to at least a ten minute rest period in which they are relieved of all duties, as required by
28 Cal. Lab. Code §226.7, §512 and Wage Order 5.

36. According to Plaintiff, he never received rest breaks, and this experience is consistent
with that of other aggrieved employees. Breaks were not integrated into daily schedules and

1 employees were required to always be on the floor and available to make a sale. Because of this
2 lack of process, and due to the press of work, it was difficult and frequently impossible for
3 employees to take rest breaks. Defendants failed to pay Plaintiff and similarly situated employees
4 all premium compensation (one hour of pay at the employee's regular rate of pay for missed or
5 untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. As a
6 derivative claim, Plaintiff also alleges that their pay statements were inaccurate, failing to
7 include required rest period penalties, thus failing the requirements of Labor Code §226(a). As a
8 result of these violations, Defendants are liable for civil penalties pursuant to Cal. Labor Code
9 §558 and §2698 *et. seq.*

10 37. Plaintiff will seek statutory penalties pursuant to Labor Code §558 in this
11 representative action for each violation of Labor Code §226.7. Further, as a derivative claim of
12 failing to pay the premium pay of one (1) hour of pay at the employee's regular rate of
13 compensation for each workday that the meal period is not provided, Plaintiff will seek statutory
14 penalties under Labor Code §226(a)(1) because the failure to pay such premium wages rendered
15 her gross pay calculations inaccurate in violation of Labor Code §226(e)(2)(B)(i).

16 **Civil Penalties for Failure to Comply with California Sick Pay Requirements**

17 (Cal. Labor Code §§246, 247.5, 248.5 and 2698 *et seq.*)

18 38. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 39. California Labor Code §246 provides that “[a]n employee who, or after July 1, 2015,
21 works in California for the same employer for 30 or more days within a year from the
22 commencement of employment is entitlement to paid sick days.” §246(a)(1). Further, “[a]n
23 employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours
24 worked, beginning at the commencement of employment or the operative date of this article,
25 whichever is later, subject to the use and accrual limitations set forth in this section.” §246(b)(1).

26 40. Labor Code § 247.5(a) states: “An employer shall keep for at least three years records
27 documenting the hours worked and paid sick days accrued and used by the employee, and shall
28 allow the Labor Commissioner to access these records pursuant to the requirements set forth in

1 Section 1174. An employer shall make these records available to an employee in the same
2 manner as described in Section 226. If an employer does not maintain adequate records pursuant
3 to this section, it shall be presumed that the employee is entitled to the maximum number of
4 hours accruable under this article, unless the employer can show otherwise by clear and
5 convincing evidence.”

6 41. Defendants have failed to provide required California paid sick days and further
7 failed to distribute and maintain required documentation concerning how many sick dates were
8 available, in violation of Labor Code §§ 246, 246(a), 246(b)(1), and 247.5. Defendants failed to
9 provide Plaintiff and other aggrieved employees with this information on paystubs, and no other
10 documents concerning California Sick Pay accompanied the employees’ pay. Defendants are
11 liable for damages pursuant to §§ 248.5 and 2698 *et seq.*

12 **Civil Penalties for Failure to Reimburse for Required Business Expenses**

13 (Cal. Labor Code §§1198, 2802, 2698 *et seq.*)

14 42. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
15 incorporate said paragraphs herein by reference.

16 43. California Labor Code § 2802(a) provides, in pertinent part, that “[a]n employer shall
17 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
18 in direct consequence of the discharge of his or her duties, or his or her obedience to the
19 directions of the employer.”

20 44. Plaintiff and aggrieved employees were required to use their personal cell phones for
21 work related communications, although Defendants do not reimburse them in any way for the
22 expense of their personal cell phone use as required by the Labor Code. Accordingly, Defendants
23 are liable for civil penalties under PAGA §2699 *et seq.*

24 **Civil Penalties for Failure to Furnish and Maintain Accurate Payroll Records**

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

26 45. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
27 incorporate said paragraphs herein by reference.
28

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

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

18 48. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
19 wage statements to Plaintiff and the aggrieved employees and maintain accurate records, in
20 accordance with Labor Code §§ 226 and 1174. As a result of the unlawful employment practices
21 discussed herein, the statements provided to Plaintiff and aggrieved employees have not
22 consistently accurately reflected actual gross wages earned, including overtime meal/rest
23 recovery period pay, commission rates, travel rates, total hours worked, and California sick pay
24 requirements. and meal/rest premiums and total regular, overtime, and double time hours
25 worked. Such failures caused injury to Plaintiff and others, by, among other things, impeding
26 them from knowing the total hours worked and the amount of wages to which they are entitled.
27
28

1 49. Defendants knowingly and intentionally failed to itemize the gross wages earned, net
2 wages earned, and total hours worked. Defendants are liable for civil penalties pursuant to Labor
3 Code § 2699 *et seq.*

4 50. Labor Code § 226.3 provides, “[a]ny employer who violates subdivision (a) of
5 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
6 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
7 for each violation in a subsequent citation, for which the employer fails to provide the employee
8 a wage deduction statement or fails to keep the records required in subdivision (a) of Section
9 226. The civil penalties provided for in this section are in addition to any other penalty provided
10 by law.”

11 51. Defendants are liable for civil penalties under §226.3 for violation of §226(a).

12 52. Plaintiff alleges on information and belief that Defendants knowingly and
13 intentionally failed to furnish aggrieved employees with accurate itemized statements for each
14 pay period that they worked and failed to maintain accurate payroll records of the aggrieved
15 employees as mandated by Labor Code §§ 226.

16 53. Defendants failed to timely furnish final wages upon separation as required under
17 Labor Code §201-202 and failed to pay resulting waiting time penalties when final wages were
18 ultimately paid. As a result, Defendants issued inaccurate final wage statements to aggrieved
19 employees.

20 54. Inaccuracies in the wage statements and payroll records were also caused, among
21 other reasons, by Defendants’ unlawful timekeeping practices that resulted in underreporting
22 hours worked, including overtime hours worked, resulting from missed and interrupted meal
23 periods. Plaintiff alleges on information and belief that as a result of Defendants’ conduct,
24 aggrieved employees sustained damages. As such, aggrieved employees are entitled to civil
25 penalties §§ 226.3 and §2698.

26 55. Through this representative action, Plaintiff will advance the interests of hundreds of
27 current and former employees, such that joinder is impracticable. These current and former
28

employees can be readily be identified through a review of Defendants’ payroll records and the records of the company that handles payroll for Defendants.

56. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

FIRST CAUSE OF ACTION

Against All Defendants for Violation of the Private Attorneys General Act (“PAGA”) (California Labor Code §2698 *et seq.*)

57. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

58. Plaintiff is an “aggrieved employee” under PAGA, as she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and former aggrieved employees of Defendants, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

59. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

60. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

- a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal. Lab. Code §§218, 510, 1194, 1197, 1198, 2699 *et seq.*);
- b. Failure to Timely Pay All Wages Owed (Cal. Lab. Code §§201, 202, 203, 558 2698 *et seq.*);
- c. Failure to Provide Uninterrupted Meal Breaks (Cal. Lab. Code §§226, 226.7, 512, 1196, 2698 *et seq.*);
- d. Failure to Provide Rest Breaks (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*);

- e. Failure to Comply with California Sick Pay Requirements (Cal. Lab. Code §§246, 247.5, 285.5, 2698 *et seq.*);
- f. Failure to Reimburse for Required Business Expenses (Cal. Lab. Code §§1198, 2802, 2699 *et seq.*); and
- g. Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate Records (Cal. Lab. Code §§ 226, 226.3, 1174, 1174.5, 2698 *et seq.*).

61. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code §226(a).

62. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid.

63. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

64. Plaintiff and the other current and former employees of Defendants are aggrieved employees. They were or are employed by Defendants, and each of them, and the violations alleged herein were committed against them. Plaintiff brings this action on behalf of himself and all other current and former aggrieved employees.

65. At the time of each violation, Defendants employed one or more employees.

66. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be determined at trial, pre-judgment interest, costs and attorneys' fees.

67. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and Workforce Development Agency (“LWDA”) and served by certified mail upon Defendants, Plaintiff through counsel notified the LWDA and Defendants of the specific Labor Code provisions that Defendants have violated. The LWDA did not respond to Plaintiff’s Notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue his PAGA claims in this action on behalf of aggrieved employees and the State of California.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for judgement against Defendants as follows:

1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be determined at trial, but at least the jurisdictional amount of this Court;
2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;
3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;
4. For a permanent injunction enjoining the Defendants from violating the relevant provisions of the Labor Code and Industrial Welfare Commission Orders as well as various federal law as may be applicable;
5. Pre-judgement and post-judgement interest as provided by law; and
6. Such other and further relief that the Court may deem just and proper.

DATED: May 22, 2020

KOUL LAW FIRM
LAW OFFICES OF SAHAG MAJARIAN II

~~Page 2~~

BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff JORGE NAVARRETE, and
all aggrieved employees

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EXHIBIT 1



www.koullaw.com

Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

March 16, 2020

Via E-filing:

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

Via Certified U.S. Mail:

Shottenkirk-California, LLC dba
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68068 Kyle Road
Cathedral City, CA 92234

Shottenkirk-California, LLC dba
Shottenkirk Honda of Davis
4343 Chiles Rd,
Davis, CA 95618

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Jorge Navarrete
Employer: Shottenkirk-California, LLC dba Shottenkirk Desert Lexus
and dba Shottenkirk Honda of Davis

Dear Sir or Madam:

Jorge Navarrete has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM to represent him, and all other aggrieved employees, for wage and hour claims against his employer, Shottenkirk-California, LLC dba Shottenkirk Desert Lexus and dba Shottenkirk Honda of Davis (hereafter collectively referred to as “Employer.”)

Employer owns and operate a car dealership in Cathedral City and Davis, California. (<https://www.desertlexus.com/>). Claimant’s proposed PAGA representative action would represent numerous aggrieved employees for both locations. Claimant began working for Employer in 2017 and continued until May of 2019.

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

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

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

Section 2(K) or Wage Order 5 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and his coworkers do not receive payment for all hours worked, including time shaved from their timecards due to employer payment miscalculations, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below:

Failure to Pay rest and recovery periods at regular hourly rate: Employees who earn primarily commission income are required to be paid for paid rest break periods. Here, Employer did pay for “Rest Period Supplements” as detailed in the screenshot, below, however they were not paid at the correct rate. Employer calculates the amount owed to each employee using a standard formula. For every day worked between 3.5-6 hours, the employee is paid \$2.50 as compensation for the paid break period. For every day worked between 6-10 hours, where employees would be entitled to two breaks, employees are paid \$5.00 as compensation for paid rest breaks. For every day worked between 10-14 hours, employees are paid \$7.50 to account for two rest periods paid at the regular rate, and one at overtime. However, these amounts are computed based upon an employee earning minimum wage, and they are the same every week. Employer is underpaying commission employees for rest and recovery period time by paying a set amount regardless of the employee’s regular hourly rate, as required. Pursuant to Labor Code 226.2 (a)(3)(A), rest recovery periods must be paid at the employee’s regular hourly rate, which is determined by dividing the total amount of compensation for the workweek by the hours worked, excluding rest and recovery periods.¹

¹ Labor Code Section 226.2 (a)(3)(A): Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:

Failure to Pay overtime at correct regular hourly rate: Moreover, because this incorrect rate is used to calculate the employee's regular rate for purposes of calculating overtime, overtime is also incorrectly calculated and underpaid. (A15, "Base Hourly Pay" (line A10, below)

SEMI-MONTHLY PAY CALCULATOR

Name: Jorge Navarrete

EE#: 585

Pay Period:

2/20/2019

SECTION 1 – BASE HOURLY PAY				
A1.	Minimum Wage Rate:			\$ 12.00
A2.	Total Hours Worked for Period (including sales, non-sales, and overtime hours):			70.68
A3.	Total Regular Overtime Hours Worked for Period:			7.18
A4.	Total Double Time Hours Worked for Period:			0.00
A5.	Separate Hourly Pay (A x Non-Sales Hours Worked (5.5)):			\$ 66.00
A6.	Training Pay (Rate x Hours):		Rate: \$ 12.00 Hours:	\$ -
A7.	Rest Period Supplements if A8 > \$0, paid at \$12.00/hr, else \$15.00/hr (#1 + #2 + #3):			\$ 55.00
#1	# DAYS 3.5 - 6 HOURS: (0) x \$2.50 = \$0.00		Total RP Hours: 3.67	
#2	# DAYS 6 - 10 HOURS: (8) x \$5.00 = \$40.00			
#3	# DAYS 10 - 14 HOURS: (2) x \$7.50 = \$15.00			
A8.	Sales Activity Minimum Wage Pay Supplement (if applicable): If (A1 x (A2 - A5 Hours - A7 Hours)) - A6 > (A11 + A12), then Minimum Wage Pay Supplement = A1 x (A2 - A5 Hours - A7 Hours) - (A6 + A11 + A12);			\$ -
A9.	Exemption Supplement:			\$ -
A10.	Total Base Hourly Pay (A5 + A6 + A7 + A9):			\$ 121.00

SECTION 2 – BASE INCENTIVE PAY			
A11.	Commission:		\$ 2,487.43
A12.	Other Non-Commission Bonuses and Incentives:		\$ 250.00
A13.	Total Payable Commissions & Bonuses (A11 + A12):		\$2,737.43

SECTION 3 – OVERTIME PAY			
A14.	Total Compensation (A10 + A13):		\$ 2,858.43
A15.	Regular Rate (A14 / A2):		\$ 40.44
OVERTIME EXEMPTION TEST			
#1	Is A15 > \$15.00 = (1.5 x State Minimum Wage)?		Yes
#2	Is A11 > (A9 + A12 + A10)?		Yes
#3	Is overtime due? (overtime is due unless the answer to questions 1 and 2 are both "Yes")		No

Employer has required Claimant and others to work hours in excess of eight hours in a day and forty in a week, but has not paid these employees overtime compensation at one and one-half times the correct **regular rate of pay** in violation of Labor Code §510. Further, Claimant and employees have been required to work in excess of 12 hours in one day without being compensated at a rate of twice the regular rate of pay. §510. As a result, Claimant and others have been denied "the unpaid balance of the full amount of

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- (i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.
 - (ii) The applicable minimum wage.

this... overtime compensation” as required by Cal. Labor Code. §1194. Employer is liable for civil penalties pursuant to Labor Code §2699 *et seq.*

Failure to Timely Pay All Wages Owed
(Cal. Lab. Code §§201, 202 and 2698 *et seq.*)

Failure to Pay Wages Due Upon Termination

Pursuant to Cal. Lab. Code § 202 (a), “[i]f 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.” An employee who is discharged must be paid all of his or her wages immediately at the time of termination. Labor Code §§ 201 and 227.3.) As a result of Employer’s unlawful employment practices as described herein, Employer failed to pay aggrieved employees who are no longer employed by Employer all wages due in a timely manner upon termination.

As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to aggrieved employees at the time employment terminated. Further knowing that they were not being paid for all hours worked, including rest recovery periods and overtime pay. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §203, aggrieved employees are now also entitled to recover up to thirty (30) days of wages due to Employer’s “willful” failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, aggrieved employees were underpaid for hours worked, including overtime and rest recover period wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks
Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Claimant reports that he almost never took a lunch period due to the press of work. He and his coworkers were required to always be available for customers to make a sale. When he was able to take a lunch, they were interrupted or cut-short. Claimant and his coworkers never received a second meal period.

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

Employer failed to permit claimants and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Moreover, because Employer's failure to provide meal periods violates a Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that he and his coworkers never received breaks. They were required to always be on the floor and available to make a sale. They were not provided with any rest periods during the time of their employment.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 5-2001 12(A). According to Claimant, he never received rest breaks, and this experience is consistent with that of other aggrieved employees.

Breaks were not integrated into daily schedules, and Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. Because Employer violated Section 12(A)

of Wage Order 5, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements and Comply with Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The statements provided to Claimants and aggrieved employees have not consistently accurately reflected actual gross wages earned, including overtime and rest recovery period pay, commission rates, travel rates, total hours worked, and California sick pay requirements. Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Failure to Comply with California Sick Pay Requirements

(Cal. Lab. Code §§ 246, 247.5, 248.5 and 2698 *et seq.*)

Claimant, on behalf of himself and aggrieved employees, alleges that Employer failed to provide required California paid sick days and further failed to distribute and maintain required documentation concerning how many sick dates were available, in violation of Labor Code §§246, 246(a), 246(b)(1), and 247.5. This information was not listed on paystubs, and no other documentation or disclosure concerning California Sick Pay accompanied the employees' pay. Claimant now seeks damages pursuant to §§248.5 and 2698 *et seq.*

Failure to Reimburse for Required Business Expenses

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

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

Claimant and aggrieved employees are required to use their personal cell phones for work related communications, although Employer does not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

Conclusion

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a long horizontal flourish extending to the right.

Nazo Koulloukian, Esq.
Attorney for Claimant