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SAN LUIS OBISPO SUPERIOR COURT
BY 
M. Zepeda, Deputy Clerk

1 ZACHARY CROSNER (SBN 272295)
zach@crosnerlegal.com
2 MICHAEL CROSNER (SBN 41294)
mike@crosnerlegal.com
3 BLAKE R. JONES (SBN 211221)
blake@crosnerlegal.com
4 CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
5 Beverly Hills, CA 90210
Tel: (310) 496-5818
6 Fax: (310) 510-6429

7 Attorneys for Plaintiff
JESSE MCCAULEY

8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SAN LUIS OBISPO**

11
12 JESSE MCCAULEY, as an individual and on
behalf all others similarly situated and
13 aggrieved,

14 Plaintiff,

15
16 vs.

17
18 MULLAHEY FORD, INC., a California
corporation; MT. MULLAHEY, INC., a
19 California corporation; MULLAHEY
CRYSLER DODGE JEEP RAM, a California
20 business; MICHAEL J. MULLAHEY, an
individual; TIMOTHY J. MULLAHEY, an
21 individual; and DOES 1 to 100, inclusive,

22 Defendants.
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CASE NO. 21CV-0001

**PRIVATE ATTORNEYS GENERAL
ACT ("PAGA") REPRESENTATIVE
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff JESSE MCCAULEY, an individual on behalf of himself and all other Aggrieved
2 Employees similarly situated (“Aggrieved Employee(s)”), hereby files this Complaint against
3 Defendants MULLAHEY FORD, INC., a California corporation; MT. MULLAHEY, INC., a
4 California corporation; MULLAHEY CRYSLER DODGE JEEP RAM, a California business;
5 MICHAEL J. MULLAHEY, an individual; TIMOTHY J. MULLAHEY, an individual; and
6 DOES 1 to 100, inclusive (collectively referred to herein as “Defendants”). Plaintiff alleges as
7 follows:

8 **THE PARTIES**

9 1. Plaintiff JESSE MCCAULEY is, and at relevant times was, an individual domiciled in the
10 State of California and a citizen of the State of California who worked in the parts department and
11 later as a porter for Defendants in the State of California.

12 2. On information and belief, MULLAHEY FORD, INC. is a California Corporation that,
13 at all relevant times, was authorized to do business within the State of California and is doing
14 business in the State of California.

15 3. On information and belief, MULLAHEY CRYSLER DODGE JEEP RAM, is a California
16 business that, at all relevant times, was authorized to do business within the State of California
17 and is doing business in the State of California.

18 4. On information and belief, MT. MULLAHEY, INC., is a California Corporation that,
19 at all relevant times, was authorized to do business within the State of California and is doing
20 business in the State of

21 5. On information and belief, MICHAEL J. MULLAHEY is an individual residing in the
22 State of California and is, and at all relevant times has been, the Chief Executive Officer and
23 managing agent of MULLAHEY FORD, INC. On information and belief, MICHAEL J.
24 MULLAHEY devised and implemented the policies at issue in this complaint and “caused” these
25 violations as that term is used in Labor Code §§ 558 and 1197.1. Pursuant to Labor Code §§558
26 and 1197.1, MICHAEL J. MULLAHEY is liable as a person who “caused” the violations to
27 occur.

28 6. On information and belief, TIMOTHY J. MULLAHEY is an individual residing in the

1 State of California and is, and at all relevant times has been, the Chief Financial Officer and
2 managing agent of MULLAHEY FORD, INC. On information and belief, TIMOTHY J.
3 MULLAHEY devised and implemented the policies at issue in this complaint and “caused” these
4 violations as that term is used in Labor Code §§ 558 and 1197.1. Pursuant to Labor Code §§558
5 and 1197.1, TIMOTHY J. MULLAHEY is liable as a person who “caused” the violations to
6 occur.

7 7. The true names and capacities of the DOE Defendants sued herein as DOES 1 through
8 100, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendants by
9 said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible
10 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to
11 reflect the true names and capacities of the Doe Defendants when such identities become known.

12 8. Plaintiff is further informed and believes that, at all relevant times, each Defendant
13 was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling
14 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
15 interest of some or all of the other Defendants, and was engaged with some or all of the other
16 defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
17 other Defendants so as to be liable for their conduct with respect to the matters alleged in this
18 complaint. Plaintiff is further informed and believes and thereon alleges that each Defendants
19 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
20 times, each Defendants knew or should have known about, authorized, ratified, adopted,
21 approved, controlled, aided and abetted the conduct of all other Defendants.

22 9. At all relevant times, Defendants were and are legally responsible for all of the unlawful
23 conduct, policies, practices, acts and omissions complained of herein. Further, Defendants are
24 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
25 respondent superior. The conduct of Defendants’ managers and supervisors was at all relevant
26 times undertaken as employees of Defendants, acting within the scope of their employment or
27 authority in all of the unlawful activities described herein.

28 10. Whenever and wherever reference is made in this complaint to any act or failure to act by

1 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the
2 acts and/or failures to act by each Defendant acting individually, jointly and severally.

3 11. Plaintiff is informed and believes, and thereon alleges that at all times relevant to this
4 Complaint, Defendants were the joint employers of Plaintiff and/or the Aggrieved Employees
5 upon whose behalf Plaintiff brings these claims, in that Defendants, exercised sufficient control
6 over Plaintiff's and/or the Aggrieved Employees' wages, hours and working conditions, and/or
7 suffered or permitted Plaintiff and/or the Aggrieved Employees to work, so as to be considered
8 the joint employers of Plaintiff and/or the Aggrieved Employees. Specifically, upon information
9 and belief, Plaintiff alleges that Defendants created a uniform set of written policies and
10 procedures concerning meal and rest periods that were distributed to, applied to, and controlled
11 the wages, hours and working conditions of Plaintiff and/or the Aggrieved Employees, and
12 further that Defendants uniformly compensated and controlled the wages of Plaintiff and/or the
13 Aggrieved Employees in a uniform manner. Defendants collectively represented to Plaintiff and
14 the Aggrieved Employees in writing through their Employee Handbook that each of them was an
15 "at-will" employee of Defendants, and that Defendants collectively retained the right to terminate
16 their employment with or without cause. Defendants further collectively represented to Plaintiff
17 and the Aggrieved Employees in writing the details of their compensation and the manner in
18 which they were to take meal and rest periods, time-keeping and other pay-related restrictions,
19 guidelines for payment, the procedures required by Defendants collectively for recordation of
20 hours worked and the policies applicable to Plaintiff and the Aggrieved Employees by which
21 Defendants collectively would evaluate the wage rate of Plaintiff and the Aggrieved Employees.

22 12. Thus, Defendants collectively exercised the right to control the wages, hours and working
23 conditions of Plaintiff and the Aggrieved Employees. Upon information and belief, Defendants
24 informed Plaintiff and the Aggrieved Employees in writing of the uniform standards by which
25 Plaintiff and the Aggrieved Employees would have to abide in his employment with Defendants,
26 including collectively stating to Plaintiff and the Aggrieved Employees in writing a code of
27 business conduct and ethics and a code of off-duty conduct with which Plaintiff and the
28 Aggrieved Employees was required to comply as a condition of his employment. As such,

1 Defendants collectively held the right to control virtually every aspect of Plaintiff's and the
2 Aggrieved Employees' employment, including the instrumentality that resulted in the illegal
3 conduct for which Plaintiff seeks relief in this Complaint.

4 **JURISDICTION AND VENUE**

5 13. This court possesses original subject matter jurisdiction over this matter. Venue is proper
6 in San Luis Obispo County, California, because Defendants do business in San Luis Obispo
7 County, California, and some of the complained of conduct occurred in this judicial district.

8 **FACTUAL ALLEGATIONS**

9 14. During the one-year and sixty-five-day period preceding filing of this complaint, Plaintiff
10 and each of the other Aggrieved Employees were employed by Defendants as hourly paid, non-
11 exempt employees in the State of California. Defendants, at all relevant times, exercised control
12 over Plaintiff and each of the other Aggrieved Employees and suffered and/or permitted them to
13 work.

14 15. Plaintiff began working for Defendants in the parts department, in or about March 2019,
15 and continued working in that capacity until he started working as a porter for Defendants in
16 Augusts 2019. He worked as a porter until he was terminated on November 5, 2019. At all times
17 during his employment, Plaintiff was employed as a non-exempt employee. He was paid on an
18 hourly basis and compensated as well with non-discretionary remuneration, including but not
19 limited to, bonuses. Plaintiff typically worked more than eight (8) hours in a day and or more
20 than forty hours in a week. He was compensated by Defendants bi-weekly, as set forth in his
21 wage statements.

22 16. Plaintiff and other Aggrieved Employees did not receive timely, compliant thirty-minute
23 meal periods. Plaintiff and other Aggrieved Employees were forced to take late first meal periods
24 and/or work through their first meal periods or said meal periods would be interrupted/cut short
25 due to the nature and constraints of their job duties, among other reasons. Plaintiff and other
26 Aggrieved Employees never received a second meal break when working shifts of more than 10
27 hours. Defendants did not pay a meal period premium for each missed/improper meal period, and
28 on the rare occasion Defendants did pay a meal period premium, Defendants did not pay the

1 correct premium due to Defendants' failure to incorporate all non-discretionary forms of
2 remuneration into the regular rate of pay for purposes of calculating the owed meal period
3 premium.

4 17. Defendants also failed to maintain accurate and complete time keeping records of Plaintiff
5 and other Aggrieved Employees' shift and meal periods start and stop times.

6 18. Upon information and belief, Defendants at times implemented a policy and practice of
7 utilizing an automated system to round the number of hours worked by Plaintiff and other
8 Aggrieved Employees. Specifically, upon information and belief, Defendants implemented a time
9 rounding system that systematically deprived Plaintiff and the Aggrieved Employees members of
10 compensable hours worked because it resulted in understating hours worked due to the rounding.
11 This system would take the time input by Plaintiff and other Aggrieved Employees and then
12 round that input to the nearest increment, resulting in an undercounting of total hours worked in
13 any given workday.

14 19. Plaintiff and other Aggrieved Employees did not receive compliant, timely 10 (ten)-
15 minute rest periods every four hours or major fraction thereof. Plaintiff and the other Aggrieved
16 Employees, at times, were required to take late rest periods and/or work through their rest
17 periods, or any purported rest periods would be interrupted/cut short due to the nature and
18 constraints of their job duties, among other reasons. Plaintiff and other Aggrieved Employees
19 never received a third rest break after the 10th hour of working a single shift. Furthermore,
20 Defendants prohibited Plaintiff and other Aggrieved Employees from leaving the work premises
21 during any purported rest periods. This is illegal as employers cannot require employees to stay
22 on the work premises during their rest periods as "one cannot square the practice of compelling
23 employees to remain at the ready, tethered by time and policy to *particular locations* or
24 communications devices, with the requirement to relieve employees of all work duties and
25 employer control during 10-minute rest periods. [emphasis added]." *Augustus v. ABM Security*
26 *Services, Inc.*, (2016) 5 Cal.5th 257, 269.

27 20. Defendants never once compensated Plaintiff a one-hour premiums for any missed, late,
28 interrupted, or otherwise non-compliant rest periods. Upon information and belief, this policy of

1 failing to pay rest period premiums for denied rest periods was applied uniformly to all Aggrieved
2 Employees.

3 21. Upon information and belief, Defendants failed to provide proper paid sick leave to
4 Plaintiff and other Aggrieved Employees and failed to maintain accurate records of used sick
5 leave and the balance of paid sick leave left to Plaintiff and other Aggrieved Employees.
6 Notably, where an employer compensates an employee with non-discretionary bonus pay (as
7 Defendants did here), any sick /sick leave pay calculation must incorporate the value of the non-
8 discretionary bonuses/other non-discretionary remuneration; upon information and belief,
9 Defendants' sick leave/sick pay calculation did not properly incorporate all non-discretionary
10 remuneration owed to Plaintiff and other Aggrieved Employees, including but not limited to,
11 additional rates of pay/shift differentials, commissions, and bonuses/incentive pays, into the
12 regular rate of pay for purposes of calculating the sick leave pay rate. Defendants failure to so
13 incorporate resulted in an underpayment of sick leave pay to Plaintiff and other Aggrieved
14 Employees. Defendants further failed to provide notice of the correct sick leave amount balance
15 left for Plaintiff and other Aggrieved Employees, thus affecting the intelligent exercise of their
16 paid sick leave benefits. But for this failure, Plaintiff and other Aggrieved Employees would
17 have used their paid sick leave at least prior to their respective separation dates. This illegal
18 retention of paid sick leave is unlawful.

19 22. During the relevant time period, Defendants failed to furnish accurate wage statements in
20 compliance with Labor Code section 226. Among other things, Plaintiff and other Aggrieved
21 Employees' paystubs did not include: (1) the correct total hours that Plaintiff and other Aggrieved
22 employees worked during each pay period; (2) the correct total gross and net wages; and (3) all
23 meal and rest period premiums owed at the proper rate.

24 23. Defendants failed to pay Plaintiff for all hours worked during employment and upon the
25 separation of employment by, including but not limited to, failing to pay Plaintiff for all hours
26 worked as well as a failure to pay meal or rest break premiums.

27 24. During the relevant time period, Defendant failed to correctly calculate the total number
28 of hours worked by Plaintiff and other Aggrieved Employees by virtue of its time-rounding

1 system. Plaintiff and other Aggrieved Employees often worked more than 8 hours in a day and/or
2 40 hours in a week for which they were not properly compensated. This undercounting of
3 Plaintiff and other Aggrieved Employees' total hours worked led to an undercounting of the total
4 overtime hours worked for Plaintiff and other Aggrieved Employees. Further, upon information
5 and belief, Defendants would pay some employees bonuses, commissions, and/or piece-rate pay,
6 which was not incorporated into the regular rate for calculating overtime.

7 25. Plaintiff regularly worked time for which they were not compensated by Defendants at a
8 rate no less than the prevailing minimum wage. Upon information and belief, Aggrieved
9 Employees were paid by commission or piece-rate only for sales-related activities and were not
10 separately compensated for non-sales activities, including, but limited to, rest breaks, training,
11 and meetings. Defendant's policies of undercounting the total hours worked by Plaintiff and other
12 Aggrieved Employees through a time-rounding system and not separately counting non-sales
13 activities lead to both minimum wage and overtime violations.

14 26. Additionally, Defendants failed to reimburse Plaintiff for incurred business expenses,
15 including cell phone and internet data usage, which was necessary to perform activities integral
16 and indispensable to their job duties and Defendants' policies and practices.

17 27. Plaintiff is informed and believes that Defendants engaged in these same unlawful
18 practices with regard to all of the other Aggrieved Employees.

19 28. During the relevant time period, Defendants failed to furnish accurate wage statements in
20 compliance with Labor Code section 226 to Plaintiff and the Aggrieved Employees. Based on the
21 herein described minimum wage and overtime violations, well as Defendants' failure to properly
22 compensate meal and rest premiums and sick leave pay at the proper rate, Plaintiffs' paystubs,
23 among other things, did not include: (1) the correct total gross and net wages (2) all owed sick
24 leave pay; and (3) all owed meal and rest period premiums.

25 29. Based on the herein described minimum wage and overtime violations, as well as
26 Defendants' failure to properly compensate meal and rest premiums and sick leave pay at the
27 proper rate, inter alia, Defendants willfully failed to pay Plaintiffs for all hours worked during
28 employment and upon the separation of employment.

1
2 30. Plaintiff brings his complaint under the Private Attorneys General Act of 2004, Labor
3 Code sections 2698, *et seq.*, (“PAGA”), as a representative action on behalf of the State of
4 California, regarding violations of the Labor Code as to all similarly aggrieved individuals
5 employed by Defendants in the State of California as a non-exempt employee. This action is
6 brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

7 31. During the period beginning one-year period preceding the filing of the required PAGA
8 notice with the Labor Workforce and Development Agency, and continuing through the present, as
9 alleged herein, Defendants violated Labor Code sections 201-202, 204, 216, 221-223, 226, 226.2,
10 226.7, 226.8, 245-248.5, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, 2751, 2802, 2810,
11 2810.5, and all relevant sections of the applicable Wage Orders as to Plaintiff and all other
12 Aggrieved Employees employed by Defendants who worked in Defendant’s parts department or a
13 similarly situated position/job Aggrieved Employees however titled. These violations subject
14 Defendants to civil penalties as set forth in the foregoing statutes as well as other provisions
15 of the Labor Code.

16 **THE “AGGRIEVED EMPLOYEES”**

17 32. Plaintiff brings this action on behalf of himself and all similarly situated aggrieved
18 employees. The other Aggrieved Employees shall be defined as follows: “All non-exempt hourly
19 paid, commissioned and/or piece rate employees of Defendants, who were employed in California
20 at any time within the one year and sixty-five days prior to the filing of the initial complaint.”

21 **FIRST CAUSE OF ACTION**

22 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,**
23 **LABOR CODE SECTIONS 2698, ET SEQ.**

24 33. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

25 34. California law provides employees in California must be paid for all hours worked, up to
26 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage. As
27 alleged herein, Plaintiff and the other Aggrieved Employees regularly worked hours for which
28 they were not compensated by Defendants as required by California law. Defendants unlawfully

1 maintained a policy and practice of undercounting the total hours worked by Plaintiff and other
2 Aggrieved Employees through a time-rounding system, not separately renumeraling Aggrieved
3 Employees for non-sales activities, and requiring Plaintiff and Aggrieved Employees to work
4 through their meal breaks and rest breaks, notwithstanding actual and/or constructive knowledge
5 that they did not receive compliant meal periods for these shifts. Defendants owes Plaintiff and
6 other Aggrieved Employees at least minimum wage for this time spent working on non-sales
7 tasks and working through their meal breaks, resulting in unpaid wages.

8 35. As a result, Defendants failed to pay Plaintiff and other Aggrieved Employees for all
9 hours worked at a rate no less than the prevailing minimum wage, thereby violating California
10 minimum wage laws. These minimum wage violations subject Plaintiff and Aggrieved
11 Employees to red to civil penalties under Labor Code sections 558, 558.1, 1197.1 and Section 20
12 of all applicable wage orders. Each violation of each Labor Code section and Wage Order
13 provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period
14 during which the referenced statutes and Wage Order provisions were violated.

15 36. California law provides employees in California must be paid overtime, equal to 1.5 times
16 the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day and
17 must be paid double wages for all hours worked in excess of 12 per day, unless they are exempt.
18 As alleged herein, Plaintiff and the other Aggrieved Employees worked overtime hours for which
19 they were not compensated by Defendants as required by California law. The overtime pay did
20 not incorporate all forms of non-discretionary remuneration thus denying Plaintiff and other
21 Aggrieved Employees of significant overtime wages. Moreover, as a result of what was
22 essentially a time-rounding system, Plaintiff and other Aggrieved Employees were denied further
23 overtime wages. Defendants owe Plaintiff and other Aggrieved Employees overtime wages for
24 this work where the addition of such hours would require payment at an overtime rate.

25 37. Defendants' violations with respect to minimum wages and/or overtime wages, as alleged
26 herein, result in separate violations of Labor Code sections 1198 and 1199, and subject
27 Defendants to civil penalties under the Labor Code, including without limitation Labor Code
28 sections 1197.1 and 2699. Each violation of each Labor Code section and Wage Order provision,

1 for each aggrieved employee, results in a separate civil penalty.

2 38. Under the Labor Code and IWC Wage Orders, Defendants were required to provide
3 Plaintiff and the other Aggrieved Employees with one 30-minute meal break free from all duties
4 for all shifts longer than 5 hours, and a second 30-minute meal break free from all duties for all
5 shifts longer than 10 hours. Meal periods can be waived, but only under the following
6 circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more
7 than six (6) hours, the required meal period may be waived by mutual consent of the employer
8 and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no
9 more than twelve (12) hours, the required second meal period may be waived by mutual consent
10 of the employer and employee, but only if the first meal period was not waived. Employers
11 covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one
12 meal period for shifts over five hours (see above), and (2) to record having done so. If the
13 employer fails to properly record a valid meal period, it is presumed no meal period was
14 provided.

15 39. Plaintiff and other Aggrieved Employees regularly worked shifts consisting of more
16 than five (5) hours without being provided a thirty-minute, timely, uninterrupted, duty-free meal
17 period. They were unable to avail themselves of such breaks for various reasons, including, the
18 pressures from their workloads and the lack of relief workers available, commentary and pressure
19 from superiors to take no breaks at all. Upon information and belief, Plaintiff and the other
20 Aggrieved Employees did not receive any second meal periods for shifts during which they
21 worked more than ten hours. Upon information and belief, Defendants failed to maintain a
22 company meal period policy compliant with California law and failed to maintain first or second
23 meal period waiver agreements compliant with California law. Defendants also failed to pay
24 Plaintiff and other Aggrieved Employees an additional hour of wages at their proper regular rates
25 of pay for each workday a meal period was not provided.

26 40. Defendants failed to provide Plaintiff and the other Aggrieved Employees with
27 all required meal periods, or with compensation in lieu thereof. In failing to provide all required
28 and fully compliant meal periods and/or failing to compensate for missed/non-compliant meal

1 periods at the correct regular rate of compensation, Defendants violated Labor Code sections
2 226.7, 512, and 1198-1199, and Wage Order 5-2001 (and all applicable wage orders), sections
3 11(A) and (C). These violations subject Defendants to civil penalties under Labor Code section
4 2699, and Wage Order 5-2001 (and all applicable wage orders), section 20. Each violation of
5 each Labor Code section and Wage Order provision, for each aggrieved employee, results in a
6 separate civil penalty.

7 41. California law requires an employer to authorize or permit an employee to take a rest
8 period of ten minutes for every four hours worked, or major fraction thereof, and such rest
9 periods must be in the middle of the four-hour period insofar as practicable. If the employer fails
10 to provide any required rest periods or fails to provide a fully compliant rest break of 10 minutes
11 wherein the employee is fully relieved of all duties and all employer control, the employer must
12 pay the employee one hour of pay at the employee's regular rate of compensation for each
13 workday the employer did not provide a legally required and/or fully compliant rest period.

14 42. Defendants employed policies and procedures that ensured Plaintiff and other Aggrieved
15 Employees would not receive all legally required rest periods, as Defendants did not authorize nor
16 permit all required rest periods in strict accordance to, and in compliance with, the timing
17 requirements of all applicable Wage Orders. Defendants similarly employed policies and
18 procedures that rendered rest periods non-compliant with the requirements of California law by,
19 inter alia, failing to relieve Plaintiff and other Aggrieved Employees of all duties and all employer
20 control. Like meal breaks, Plaintiff and the other Aggrieved Employees were not always able to
21 avail themselves of their rest breaks for various reasons, including, the pressures from their
22 workloads and the lack of relief workers available, and commentary from supervisors. Per
23 Defendants' illegal rest period policy/practice, Plaintiff and other Aggrieved Employees were not
24 always relieved of their duties and were never permitted to leave the premises for purposes of
25 taking rest periods. Notably, Plaintiff and other Aggrieved Employees were never afforded any
26 version of a third rest period when working shifts of more than ten (10) hours. The requirement
27 of any third rest period was never acknowledged by Defendants. Defendants prohibited Plaintiff
28 and other Aggrieved Employees from leaving the work premises during any purported rest

1 period. Defendants further employed policies and procedures ensuring Plaintiff and other
2 Aggrieved Employees did not receive premium wages to compensate them for workdays they did
3 not receive all legally required and fully compliant rest periods.

4 43. In failing to provide all required and fully compliant rest breaks and/or failing to
5 compensate for missed/non-compliant rest breaks at the correct regular rate of compensation,
6 Defendants have violated Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 5-
7 2001 (and all applicable wage orders), section 12(A). These violations subject Defendants to civil
8 penalties under Labor Code section 2699, and Wage Order 5-2001 (and all applicable wage
9 orders), section 20. Each violation of each Labor Code section and Wage Order provision, for
10 each aggrieved employee, results in a separate civil penalty.

11 44. Pursuant to California Labor Code section 2802, Plaintiff and the Aggrieved Employees
12 were entitled to be reimbursed for all reasonable expenses associated with carrying out orders by
13 their employer and/or carrying out the duties assigned by their employers. Defendants failed to
14 pay Plaintiff and the Aggrieved Employees for reimbursement of reasonable expenses, as
15 Defendant required Plaintiff and the Aggrieved Employees to use their cell phones for text
16 messaging, phone calls and internet/data usage to perform activities integral and indispensable to
17 their job duties

18 45. Labor Code section 226(a) provides, in relevant part, that “[a]n employer, semimonthly or
19 at the time of each payment of wages, shall furnish to her or her employee, either as a detachable
20 part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid
21 by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
22 earned, (2) total hours worked by the employee . . . , (5) net wages earned, [and] (6) the inclusive
23 dates of the period for which the employee is paid . . . , (8) the name and address of the legal
24 entity that is the employer . . . , (9) all applicable hourly rates in effect during the pay period and
25 the corresponding number of hours worked at each hourly rate by the employee”

26 46. Labor Code section 226(e) provides that “[a]n employee suffering injury as a result of a
27 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
28 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a

1 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
2 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) and is entitled to
3 an award of costs and reasonable attorney's fees.

4 47. Labor Code section 226.3 provides that "[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 a
8 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226."

9 36. Defendants knowingly and intentionally failed to provide Plaintiff and other Aggrieved
10 Employees with proper, itemized wage statements as the wage statements provided by
11 Defendants do not accurately reflect, inter alia, gross wages earned, total hours worked, sick leave
12 pay, net wages earned, all applicable hourly rates in effect during each pay period, all hours
13 worked at each applicable hourly rate. Plaintiff and other Aggrieved Employees' final pay checks
14 do not include the additional bonuses/other non-discretionary remuneration that should have
15 impacted all their overtime and sick pay rates. Additionally, Plaintiff and other Aggrieved
16 Employees did not receive compliant meal and rest breaks, nor do their wage statements reflect
17 the receipt of proper premiums to compensate for not being provided those owed meal and rest
18 breaks.

19 37. Accordingly, Defendants have violated Labor Code sections 226(a) and/or 226(e) as
20 Plaintiff and other Aggrieved Employees. These violations subject Defendants to civil penalties
21 under the Labor Code, including without limitation Labor Code sections 226, 226.3 and 2699.
22 Each violation of each Labor Code section and Wage Order provision, for each aggrieved
23 employee, results in a separate civil penalty.

24 38. Defendants failed to pay Plaintiff and the other Aggrieved Employees all wages that were
25 due and owing during their employment; and, failed to Plaintiff and the other Aggrieved
26 Employees who are former employees all wages that were due and owing upon termination or
27 resignation. Among other things, Plaintiff and the other Aggrieved Employees were not paid for
28 the off-the-clock work resulting from, inter alia, from Defendants' failure to separately

1 compensate Plaintiff and other Aggrieved Employees for non-sales activity, failure to pay meal
2 and rest break premiums, and time-rounding system, as described herein.

3 39. Labor Code section 201 requires employers to pay all wages earned and unpaid at the time
4 of discharge, immediately upon discharge. Labor Code section 202 states similar provisions with
5 respect to employees who resign. For all Aggrieved Employees no longer employed by
6 Defendants, including Plaintiff, Defendants still have not paid Plaintiff and other Aggrieved
7 Employees all wages earned and unpaid at the time of discharge as alleged herein. These
8 violations subject Defendants to civil penalties under the Labor Code, including without
9 limitation Labor Code sections 203, 256 and 2699. Each violation results in a separate civil
10 penalty, for each aggrieved employee for each pay period during which the statutory provisions
11 were violated.

12 40. Labor Code section 216 declares unlawful an employer's refusal to pay wages due and
13 payable and/or denial of the validity of any claim to wages due. Defendants violated/violates this
14 section by failing to pay Plaintiff and other Aggrieved Employees for all hours worked at the
15 proper wage rate and by failing to pay Plaintiff and other Aggrieved Employees an additional
16 hour of pay for each meal/rest period not provided/that was invalid. These violations subject
17 Defendants to civil penalties under Labor Code section 225.5. Each violation results in a separate
18 civil penalty, for each aggrieved employee, for each pay period during which the statute
19 provisions were violated.

20 41. California Labor Code section 223 makes it unlawful for an employer to secretly pay
21 wages lower than required by statute while purporting to pay legal wages. As described above,
22 Defendants willfully and systematically denied Plaintiff and other Aggrieved Employees
23 minimum wage compensation for all hours worked which resulted in the payment of less than
24 statutorily required wages to them. Defendants acted with the intent to deprive them of statutory
25 wages, including, but not limited to, overtime wages and minimum wages, to which they were
26 entitled to under California law.

27 42. Thus, Defendants paid Plaintiff and other Aggrieved Employees lower wages than those
28 they were entitled to while purporting that Plaintiff and other Aggrieved Employees were

1 properly paid. California law requires employers to keep “accurate and complete” payroll records
2 showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage
3 Order 5-2001, section 7, similarly requires to keep time records showing, inter alia, when the
4 employees begin and end each work period.

5 43. At all relevant times, Defendants have failed, and continues to fail, to keep the required
6 time records, as Defendants did not provide and/or record all of Plaintiff’s and other Aggrieved
7 Employees’ hours worked, as well as the start and stop times for meal periods, as alleged herein.
8 Defendants’ failure to keep “accurate and complete” payroll records for Plaintiff and other
9 Aggrieved Employees violates Labor Code sections 1174, 1198-99, and Wage Order 5- 2001,
10 section 7. These violations subject Defendants to civil penalties under the Labor Code, including
11 without limitation sections 1174.5 and 2699. Each violation of each Labor Code section and
12 Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

13 44. Together, Labor Code sections 1198 and 1199 make unlawful employment of any
14 individual under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or
15 neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
16 sections 1174, 1197, and 1198, or other order or ruling of the IWC. Defendants’ violations with
17 respect to meal periods, rest periods, recordkeeping provisions, and minimum wages and/or
18 overtime wages, as alleged herein, result in separate violations of Labor Code sections 1198 and
19 1199, and subject Defendants to civil penalties under the Labor Code, including without
20 limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor Code section and
21 Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

22 45. Defendants failed to provide paid sick leave to Plaintiff and other Aggrieved Employees,
23 further failing to put them on notice of their paid sick leave rights—or thereby putting their
24 entitlement to sick leave in a Labor Code Section 2810.5 notice. In addition, Defendants failed to
25 maintain accurate records of used sick leave and the balance of paid sick leave left to the
26 employee throughout the relevant time period. Notably, where an employer compensates an
27 employee with non-discretionary bonus pay (as Defendants did here), any sick leave/sick pay
28 calculation must incorporate the value of the non-discretionary bonuses; upon information and

1 belief, Defendants' sick leave/sick pay calculation did not. Additionally, Defendants failed to
2 provide notice of the correct sick leave amount balance left for Plaintiff and the other Aggrieved
3 Employees, and thus affecting their intelligent exercise of their paid sick leave. But for this
4 failure, Plaintiff and the other Aggrieved Employees would have used their paid sick leave at
5 least prior to their respective separation, for as on several occasions thereafter, he or she would
6 have been entitled to use the banked sick leave and earn appropriate compensation. This illegal
7 retention of paid sick leave is unlawful, and Plaintiff seeks all forms of injunctive relief,
8 restitution, and declaratory relief as permitted by California law, on behalf of himself and all
9 Aggrieved Employees.

10 46. An Employer is required to provide paid sick days in accordance with Labor Code Section
11 245 through 248.5. Defendants failed to maintain accurate records documenting the hours worked
12 and paid sick days accrued and used by employees in violation of Labor Code Section 247.5,
13 permitting the presumption that Plaintiff was entitled to the maximum number of hours accruable
14 under this article at the time of her termination. Moreover, by not incorporating the additional
15 rates of pay/non-discretionary remunerations, including but not limited to additional rates of
16 pay/shift differentials and bonuses/incentive pays, into the sick leave rates of pay, Defendants
17 unlawfully retained and continue to retain paid sick leave that should have been paid and was not.
18 On information and belief, Plaintiff alleges that all of these practices were experienced and
19 continue to be experienced the other Aggrieved Employees. Plaintiff requests all appropriate
20 relief under the PAGA and these statutes, including but not limited to the restitution of earned
21 paid sick leave pay that was not paid to Aggrieved Employees due to Defendants' sole failure to
22 incorporate all non-discretionary remunerations/rates of pay into the regular rate for calculating
23 sick leave pay benefits as required by California law.

24 47. Accordingly, Defendants has violated Labor Code sections 233 and 234 as to Plaintiff and
25 other Aggrieved Employees. These violations subject Defendants to civil penalties under the
26 Labor Code, including without limitation Labor Code Section 233 and 234 and 2699. Each
27 violation of each Labor Code section and Wage Order provision, for each aggrieved employee,
28 results in a separate civil penalty.

1 48. Under the provisions of PAGA and Labor Code sections 201-202, 204, 216, 221-223, 226,
2 226.2, 226.7, 226.8, 233-234, 245-248.5, 256, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198,
3 1199, 2751, 2810, 2810.5, 2802 2699, et seq. and all applicable Wage Orders, as well as all
4 interpretations of these laws by California Courts and administrative bodies, as well as any other
5 law that is enforceable through PAGA, Defendants are liable for all statutorily-specified penalties
6 recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed
7 herein, or for default PAGA penalties under Labor Code Section 2699(f) for any violation of a
8 Labor Code section without a specified civil penalty.

9 49. Plaintiff complied with the procedures for bringing suit specified in Labor Code sections
10 2699.3 and 2699.5. Plaintiff gave written notice to the California Labor and Workforce
11 Development Agency (“LWDA”) via electronic mail at PAGAfilings@dir.ca.gov and to
12 Defendants via certified mail 65 days prior to this Complaint of the specific provisions of the
13 Labor Code and Wage Orders allegedly violated, including the facts and theories to support the
14 alleged violations.

15 50. Under Labor Code section 2699.3, the LWDA must give written notice by certified mail
16 to the parties it intends to investigate the alleged violations within 65 days of the date of
17 Plaintiff’s written notice. As of the expiration of the statutory exhaustion period, the LWDA has
18 not provided the parties any notice of its intention to investigate Plaintiff’s claims on behalf of the
19 State of California and other Aggrieved Employees. As of the filing of this Complaint,
20 Defendants have not responded to Plaintiff’s PAGA notice in an attempt to cure. Accordingly,
21 Plaintiff has exhausted all administrative remedies required by law.

22 51. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, Plaintiff
23 is entitled to recover civil penalties, costs, plus reasonable attorney’s fees and costs, all in an
24 amount to be proved.

25 **PRAYER**

26 WHEREFORE, Plaintiff prays for judgment against each Defendants, jointly and
27 severally, as follows:

- 28 1. For civil penalties according to proof;

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

CROSNER LEGAL, P.C.



Michael R. Crosner
Zachary M. Crosner
Blake R. Jones
Attorneys for Plaintiff JESSE MCCAULEY

Plaintiff JESSE MCCAULEY demands a trial by jury on all claims so triable.

CROSNER LEGAL, P.C.

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Michael Crosner
Blake Jones
Zachary Crosner
Attorneys for Plaintiff JESSE MCCAULEY