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Superior Court of California
County of San Joaquin
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Attorneys for Plaintiff
TIMOTHY SHOCKLEY

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STK-CV-UOE-2020-0008611

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

Timothy Shockley, an individual,
Plaintiff,

CASE NO.

vs.

COMPLAINT

Sanborn Chevrolet, Inc., a California
corporation; **Kini Sanborn**, an individual; and
Does 1-10, inclusive,

Defendants.

- 1) **Failure to Pay Wages for All Hours Worked (Lab. Code §§ 1182.12, 1771, 1774, 1194, 1194.2, 1197, 1197.1, 1198);**
- 2) **Failure to Pay Overtime Wages (Lab. Code §§ 510, 1198);**
- 3) **Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512(a), 1198);**
- 4) **Failure to Provide Rest Periods (Lab. Code §§ 226.7, 1198);**
- 5) **Failure to Provide and Maintain Accurate Records (Lab. Code §§ 226(a)/(f)/(h), 226.3, 1174(d));**
- 6) **Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);**
- 7) **Unfair Business Practices (Bus. & Prof. Code §§ 17200, et seq.); and**
- 8) **PAGA Penalties**

Jury Trial Requested

1 Plaintiff Timothy Shockley (“Plaintiff”), on behalf of himself and all other employees simi-
2 larly situated, by and through his counsel of record, allege as follows:

3 **PARTIES**

4 1. Plaintiff Timothy Shockley is a resident of the County of Sacramento. From approxi-
5 mately 2014 to April 20, 2020, Plaintiff was an employed by Sanborn Chevrolet, Inc. as an auto
6 mechanic working on a piece-rate compensation basis.

7 2. Defendant Sanborn Chevrolet, Inc. (“Sanborn”) is a California corporation licensed
8 to do business in the State of California. Sanborn’s principal place of business is 1210 S Cherokee
9 Lane, Lodi CA 95240.

10 3. Upon information and belief, Defendant Kini Sanborn (“Kini”) is an individual and
11 resident of Napa County in the State of California. On information and belief, Kini is a managing
12 agent, director, and/or officer of Sanborn and caused or directed the acts described herein, making
13 her personally liable for the Labor Code violations set forth in this Complaint under Labor Code
14 section 558.1.

15 4. The true names and capacities of the defendants named herein as Does 1 through 10,
16 inclusive (“Doe Defendants,” together with Sanborn and Kini, the “Defendants”), are unknown to
17 Plaintiffs at this time. Accordingly, Plaintiffs bring this suit against them by fictitious names pursuant
18 to California Code of Civil Procedure section 474. Plaintiffs believe that each of the Doe Defendants
19 is a California resident and/or does substantial business in the State of California. At all relevant
20 times, Does 1 through 10 were acting within the course and scope of his employment and agency
21 with the Sanborn Defendants. Plaintiff is informed and believes that each Doe defendant is responsi-
22 ble for the injuries and damages alleged herein. Plaintiffs will amend this complaint to reflect Does
23 1 through 10’s true names and capacities when they have been determined.

24 5. Except as otherwise noted herein, Defendants participated in the acts alleged in this
25 Complaint and/or were the agents, servants, employees, or representatives of the other Defendants.
26 At all times relevant to this complaint, Defendants were acting within the course, scope, and authority
27 of their agency and employment such that the acts of one defendant are legally attributable to the
28 other Defendants. Defendants, in all respects, acted as employers and/or joint employers of Plaintiffs

1 in that each of them exercised control over the wages, hours, and/or working conditions employed by
2 Defendants.

3 **VENUE AND JURISDICTION**

4 6. This Court has subject matter jurisdiction over any and all causes of action asserted
5 herein pursuant to Article VI, section 4 of the California Constitution and California Code of Civil
6 Procedure sections 88 and 410.10 by virtue of the fact that this is a civil action in which the matter in
7 controversy, not including attorneys' fees, interests, and costs, exceeds \$25,000, and because each
8 cause of action asserted arises under the laws of the State of California or is subject to adjudication
9 in the courts of the State of California.

10 7. Venue as to each defendant is proper in this Superior Court pursuant to California
11 Code of Civil Procedure section 395. Venue is proper in this Court because Defendants regularly do
12 business in—and Sanborn has its principal place of business in—San Joaquin County, and Plaintiff
13 earned the wages claimed by this action in San Joaquin County. No federal question is at issue; Plain-
14 tiff relies on California statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil
15 Procedure, and Business & Professions Code.

16 **FACTS**

17 8. Plaintiff worked for Defendants as an auto-mechanic from 2014 to on or about April
18 20, 2020.

19 9. At all times relevant hereto, Plaintiff was not exempt pursuant to Labor Code §515,
20 including because:

21 a. Plaintiffs' duties and responsibilities did not involve the management of the enterprise in
22 which they were employed or of a customarily recognize department or subdivision thereof;

23 b. Plaintiff was not licensed or certified by the State of California nor was Plaintiff primarily
24 engaged in the practice of one of the following recognized professions: law, medicine, den-
25 tistry, optometry, architecture, engineering, teaching, or accounting, nor were Plaintiffs pri-
26 marily engaged in an occupation commonly recognized as a learned or artistic profession as
27 such term is defined by Wage Order 4;

28 c. Plaintiff's duties and responsibilities did not involve either the performance of office or

1 non-manual work directly related to management policies or general business operations of
2 his employer or his employer's customers, or the performance of functions in the administra-
3 tion of a school system, or educational establishment or institution, or of a department or
4 subdivision thereof, in work directly related to the academic instruction or training carried on
5 therein;

6 d. Plaintiff did not have the authority to hire or fire other employees, nor were Plaintiff's
7 suggestions and recommendations as to the advancement and promotion or any other change
8 of status of other employees given any weight;

9 e. Plaintiffs did not customarily and regularly exercise discretion and independent judgment
10 in performing their work duties;

11 f. Plaintiffs did not perform under only general supervision work along specialized or tech-
12 nical lines requiring special training, experience, or knowledge;

13 g. Plaintiffs did not perform under only general supervision special assignments and tasks;
14 and

15 h. Plaintiffs did not spend more than one-half of their work time engaged in exempt work.

16 10. Throughout Plaintiff's employment, Plaintiff earned wages on a piece-rate basis for
17 the each mechanic job he performed.

18 11. Throughout Plaintiff's employment, Plaintiff was not paid for all hours worked in-
19 cluding for other non-productive time or compensable rest period time.

20 12. Throughout Plaintiff's employment, Plaintiff was not compensated at the proper over-
21 time rate for all hours over 8 in one day or 40 in one week, as required by law.

22 13. Throughout Plaintiff's employment, Plaintiff was not permitted to take his statutory
23 30-minute meal periods for days on which Plaintiff worked at least five hours and/or was not permit-
24 ted to take a second meal break when Plaintiff worked ten hours or more.

25 14. Throughout Plaintiff's employment, Plaintiff was not permitted to take their statutory
26 required 10-minute paid rest breaks. Any breaks taken by Plaintiff was unpaid and unprovided for by
27 Defendants.

28 15. At no time was Plaintiff paid the withheld or unpaid wages due and owing to him,

1 including upon separation of Plaintiff's employment or afterwards.

2 16. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
3 Defendants, and Defendants' officers and/or managing agents, including those identified herein as
4 DOES 1 through 10, who were authorized and empowered to make decisions that reflect and/or create
5 policy for Defendants. The aforementioned conduct of said managing agents and individuals was
6 therefore undertaken on behalf of Defendants. Defendants further had advanced knowledge of the
7 actions and conduct of said individuals whose actions and conduct were ratified, authorized, and
8 approved by managing agents whose precise identities are unknown to Plaintiffs at this time and are
9 therefore identified and designated herein as DOES 1 through 100, inclusive.

10 17. As a result of the above, Plaintiffs is entitled to past and future lost wages, bonuses,
11 commissions, and benefits.

12 **CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**

14 ***Lab. Code §§ 1182.12, 1194, 1194.2, 1771, 1774, 1197, 1197.1, and 1198*** 15 ***Failure to Pay Wages For All Hours Worked*** ***(Against Defendants)***

16 18. Plaintiff repeats and incorporate by reference all allegations set forth in this Complaint
17 as though fully described herein.

18 19. California Labor Code sections 1182.12, 1775, 1194, 1197, 1197.1, and 1198 provide
19 that payment of a wage less than the minimum wage as set by statute, commission, or by the general
20 prevailing rate is unlawful. Compensable work time is defined in Wage Order 4 as "the time during
21 which an employee is subject to the control of an employer, and includes all the time the employee
22 is suffered or permitted to work, whether or not required to do so." Code. Regs. tit. 8, § 11050(2)(K)
23 (defining "Hours Worked"). "Other nonproductive time" is defined as time under the employer's
24 control, exclusive of rest and recovery periods, that is not directly related to the activity being com-
25 pensated on a piece-rate basis." (Labor Code § 226.2) Rest periods for piece-rate employees must be
26 paid that is no less than the higher of "an average hourly rate determined by dividing the total com-
27 pensation for the workweek, exclusive of compensation for rest and recovery periods and any pre-
28 mium compensation for overtime, by the total hours worked during the workweek, exclusive of rest

1 and recovery periods” or minimum wage. (*Id.*)

2 20. Defendants failed to pay Plaintiff’s other nonproductive time separately from his
3 piece-rate wages and failed to pay all other nonproductive time at a rate higher than the minimum
4 wage.

5 21. Defendants further failed to compensate Plaintiff’s rest periods at the proper rate
6 and/or would compensate rest periods below the minimum wage.

7 22. Defendants’ failure to pay Plaintiff the applicable minimum wage for all hours worked
8 violates Labor Code sections 1182.12, 1771, 1774, 1194, 1197, 1197.1, and 1198.

9 23. Pursuant to Labor Code section 1194.2, the Plaintiff is entitled to recover the amount
10 of unpaid wages plus liquidated damages equal to the wages unlawfully unpaid and interest thereon,
11 plus the attorney’s fees and costs.

12 **SECOND CAUSE OF ACTION**

13 ***Lab. Code §§ 510 and 1198***
14 ***Overtime Wages***
(Against Defendants)

15 24. Plaintiff repeats and incorporate by reference all allegations set forth in this Complaint
16 as though fully described herein.

17 25. California Labor Code sections 510, 1198 and Industrial Wage Order 4 provide that it
18 is unlawful to employ persons without compensating them at a rate of pay either 1.5 or two times that
19 person’s regular rate of pay for hours worked in excess of eight hours per workday and/or 40 hours
20 per week.

21 26. Specifically, Industrial Wage Order 4 provides that Defendants were required to pay
22 Plaintiff at one-and-half times the regular rate for all hours worked in excess of eight hours in a day
23 or more than 40 hours in a workweek. An employee’s regular rate of pay includes all remuneration
24 for employment paid to, or on behalf of, the employee, including rest period pay, piece-rate pay,
25 commissions, non-discretionary bonuses and incentive pay. *Alvarado v. Dart Container Corp. of*
26 *California*, 4 Cal. 5th 542, 573 (2018), *as modified* (Apr. 25, 2018).

27 27. Plaintiff was not paid 1.5 times his regular for all of the hours he worked in excess of
28 eight hours in a day because Defendants failed to pay Plaintiff for all time worked as stated above

1 and any hours paid were not at the proper overtime rate.

2 28. Pursuant to Labor Code section 1194, the Plaintiff is entitled to recover his unpaid
3 overtime compensation, as well as interest, and attorneys' fees and costs.

4 **THIRD CAUSE OF ACTION**

5 ***Lab. Code §§ 226.7 and 512***
6 ***Meal Break Violations***
7 ***(Against Defendants)***

8 29. Plaintiff repeats and incorporate by reference all allegations set forth in this Com-
9 plaint as though fully described herein.

10 30. Section 11 of IWC Wage Order 4 provides that "No employer shall employ any person
11 for a work period of more than five (5) hours without a meal period of not less than 30 minutes,
12 except that when a work period of not more than six (6) hours will complete the day's work the meal
13 period may be waived by mutual consent of the employer and the employee...An employer may not
14 employ an employee for a work period of more than ten (10) hours per day without providing the
15 employee with a second meal period of not less than 30 minutes, except that if the total hours worked
16 is no more than 12 hours, the second meal period may be waived by mutual consent of the employer
17 and the employee only if the first meal period was not waived.... Unless the employee is relieved of
18 all duty during a 30 minute meal period, the meal period shall be considered an on duty meal period
19 and counted as time worked. An on duty meal period shall be permitted only when the nature of the
20 work prevents an employee from being relieved of all duty and when by written agreement between
21 the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the
22 employee may, in writing, revoke the agreement at any time."

23 31. At all relevant times, Defendants failed and refused to provide Plaintiff with uninter-
24 rupted meal periods during his work shifts, and failed to compensate Plaintiff for missed meal and
25 rest periods, as required by Labor Code §§226.7 and the applicable sections of 8 Code of Regulations
26 §11040 and Industrial Welfare Commission Order No. 4.

27 32. As alleged herein, Plaintiff was an employee and not exempt from meal breaks re-
28 quirements.

33. Throughout the period of Plaintiff employment, Defendants did not provide Plaintiffs

1 with timely duty-free meal periods.

2 34. Consequently, Plaintiff is owed one hour of pay at his regular hourly rate, or the req-
3 uisite minimum wage, whichever is higher, for each work period during each day in which Defend-
4 ants did not provide them with timely duty-free meal periods pursuant Labor Code §226.7.

5 35. Plaintiff has been deprived of his rightfully earned compensation for rest breaks as a
6 direct and proximate result of Defendants’ failure and refusal to pay said compensation.

7 36. Plaintiff is entitled to recover such amounts pursuant to Labor Code §226.7(b), plus
8 interest thereon and costs of suit.

9 **FOURTH CAUSE OF ACTION**

10 ***Lab. Code §§ 226.7 and 1198***
11 ***Rest Break Violations***
 (Against Defendants)

12 37. Plaintiff repeats and incorporate by reference all allegations set forth in this Complaint
13 as though fully described herein.

14 38. At all relevant times, Wage Order 4 and California Labor Code sections 226.7 and
15 1198 were applicable to Plaintiff.

16 39. Wage Order 4 provides that “[e]very employer shall authorize and permit all employ-
17 ees to take rest periods, which insofar as practicable shall be in the middle of each work period” and
18 that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes
19 net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than
20 3.5 hours. Labor Code section 226.7 provides that no employer shall require an employee to work
21 during any rest period mandated by an applicable order of the California IWC. To comply with its
22 obligation to provide rest periods under Labor Code section 226.7 and Wage Order 4, an employer
23 must relinquish any control over how employees spend their break time and relieve their employees
24 of all duties—including the obligation that an employee remain on call. “A rest period, in short, must
25 be a period of rest.” *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 273, 385 P.3d 823, 834 (2016),
26 *as modified on denial of reh’g* (Mar. 15, 2017).

27 40. Defendants failed to authorize or permit rest periods altogether for Plaintiff. Any rest
28 periods were paid separate from his piece-rate compensation and were not compensated at the proper

1 rate.

2 41. Defendants knew or should have known that the Plaintiff was prevented from being
3 relieved of all duties during rest periods, were not being provided rest periods, and/or were not being
4 properly paid rest periods. As a result of these policies and/or practices, Plaintiff had to work through
5 his rest periods, have his rest periods interrupted, wait extended periods of time before taking rest
6 periods. Defendants did not pay Plaintiffs for all rest period premium wages when they were missed,
7 interrupted by work, taken late and/or paid improperly. Moreover, upon information and belief, De-
8 fendants engaged in a systematic company-wide policy to not pay rest period premiums to the Plain-
9 tiff.

10 42. Pursuant to Wage Order 4 and Labor Code section 226.7(b), the Plaintiff is entitled to
11 recover from Defendants one additional hour of pay at his regular rate of pay, including the prevailing
12 wage rate where applicable, for each shift that a required rest period was not provided.

13 **FIFTH CAUSE OF ACTION**

14 ***Lab. Code §§ 226(a), 1174(d), and 1198***
15 ***Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records***
(Against Defendants)

16 43. Plaintiff repeats and incorporate by reference all allegations set forth in this Complaint
17 as though fully described herein.

18 44. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their
19 nonexempt employees with accurate, itemized statements showing total hours worked, hourly
20 wages, gross wages, total deductions and net wage earned. Pursuant to Labor Code §§226.2, item-
21 ized statements for piece-rate employees must include “the total hours of compensable rest and re-
22 covery periods, the rate of compensation, and the gross wages paid for those periods during the pay
23 period.”

24 45. An employer who violates these code sections is liable to its employees for the
25 greater of actual damages suffered by the employee, or \$50 in civil penalties for the initial pay period
26 in which a violation occurred, and \$100 per employee for each subsequent pay period, up to a stat-
27 utory maximum of \$4,000.00. In addition thereto, pursuant to Labor Code §226.3, an employer who
28 willfully violates Labor Code §226 is subject to a \$250 civil penalty for the initial pay period in

1 which a violation occurred, and \$1,000 per employee for each subsequent pay period, with no max-
2 imum.

3 46. At all relevant times, Defendants failed to provide Plaintiffs wage statements in com-
4 pliance with 226(a) and 226.2 by not providing wage statements with accurate hours worked, total
5 compensable rest periods, rate of rest period compensation and/or gross wages paid for rest periods.

6 47. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226
7 or 226.2.

8 48. Defendants' failure to comply with section Labor Code §§ 226(a) and 226.2 was
9 knowing and intentional.

10 49. In addition thereto, Plaintiff is entitled civil penalties pursuant to Labor Code §226.3.

11 50. Based on Defendants' conduct as alleged herein, Defendants' are liable for damages
12 and statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3,
13 and other applicable provisions as set forth above, as well as attorneys' fees and costs.

14 **SIXTH CAUSE OF ACTION**

15 ***Lab. Code §§ 201, 202, and 203***
16 ***Wages Not Timely Paid Upon Termination***
(Against Defendants)

17 51. Plaintiff repeats and incorporate by reference all allegations set forth in this Complaint
18 as though fully described herein.

19 52. Labor Code sections 201 and 202 provide that if an employer discharges an employee,
20 the wages earned and unpaid at the time of discharge are due and payable immediately.

21 53. Defendants willfully failed to pay Plaintiff the earned and unpaid wages set forth
22 above, including, but not limited to, overtime wages, minimum wages, and meal and rest period pre-
23 mium wages at the time of discharge and has since failed to pay any such earned and unpaid wages.

24 54. Defendants' failure to pay the Plaintiff his wages earned and unpaid at the time of
25 discharge violates Labor Code sections 201 and 202. The Plaintiff is therefore entitled to recover
26 from Defendants the statutory penalty wages for each day they were not paid, at his regular rate of
27 pay, up to a 30-day maximum penalty. Lab. Code § 203.

1 **SEVENTH CAUSE OF ACTION**

2 ***Cal. Bus. & Prof. Code §§ 17200, et seq.***
3 ***Unlawful Business Practices***
4 ***(Against Sanborn)***

5 55. Plaintiff repeats and incorporate by reference all allegations set forth in this Complaint
6 as though fully described herein.

7 56. Defendant Sanborn is a “person” as defined by California Business & Professions
8 Code sections 17201, as it is a corporation, firm, partnership, joint stock company and/or association.

9 57. Defendant’s conduct, as alleged herein, has been, and continues to be, unfair, unlawful
10 and harmful to Plaintiff and to the general public. Plaintiff has suffered injury in fact and has lost
11 money as a result of Defendants’ unlawful business practices. Plaintiff seeks to enforce important
12 rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

13 58. A violation of California Business & Professions Code sections 17200, *et seq.* may be
14 predicated on the violation of any state or federal law. Defendant’s activities, as alleged herein, are
15 violations of California law and constitute unlawful business acts and practices in violation of Busi-
16 ness & Professions Code sections 17200, *et seq.*

17 59. As a result of the violations of California law described in this Complaint, Defendants
18 unlawfully gained an unfair advantage over other businesses. Plaintiff has suffered pecuniary loss by
19 Defendants’ unlawful business acts and practices alleged herein.

20 60. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff
21 is entitled to restitution of the wages withheld and retained by Defendants during a period that com-
22 mences four years prior to the filing of this complaint; a permanent injunction requiring Defendants
23 to pay all outstanding wages due to Plaintiff; and an award of attorneys’ fees pursuant to California
24 Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

25 **EIGHTH CAUSE OF ACTION**

26 ***Violation of California Labor Code §§ 2699, et seq.***
27 ***PAGA Penalties***
28 ***(Against Defendants)***

61. Plaintiff incorporates by reference every allegation set forth above.

62. For purposes of this Complaint, “aggrieved employee” shall mean any individual who

1 worked for Defendants as a non-exempt, hourly employee from February 26, 2019 and continuing
2 into the present.

3 63. Plaintiffs, by nature of his employment with Defendants, are aggrieved employee for
4 purposes of this Complaint with standing to bring an action under PAGA.

5 64. Plaintiff has satisfied all prerequisites to serve a representative general public to en-
6 force California's labor laws, including, without limitation, the penalty provisions identified in Labor
7 Code § 2699.3, including the filing of a PAGA complaint with the LWDA.

8 65. Plaintiffs bring this representative action on behalf of themselves and all aggrieved
9 employees pursuant to Labor Code § 2699, *et seq.*, seeking civil penalties for Defendants' violation
10 of Labor Code §§ 1182.12, 1771, 1774, 1194, 1194.2, 1197, 1197.1, 1198, 510, 226.7, 226, 2802 and
11 IWC Wage Order 4 §§ 3, 4, 7, 11, 12, which are recoverable under *California Labor Code* § 2699 *et*
12 *seq.*, on his own behalf and on behalf of all aggrieved employees.

13 Penalties Owed for the Foregoing Violations

14 66. Plaintiffs and the Aggrieved Employees are entitled to civil penalties for the foregoing
15 violations in an amount to be shown at trial subject to the following formula:

- 16 a. In an amount set forth as a civil penalty in the statute; or
17 b. \$100 per initial violation per employee per pay period, and \$200 for each
18 subsequent violation per employee per pay period.

19 67. Unless otherwise specified, the penalties shall be allocated seventy-five percent to the
20 Labor and Workforce Development Agency and twenty-five percent to the affected employees. These
21 penalties may be stacked separately for each of Defendants' violations of the Labor Code. *See, e.g.,*
22 *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17, n.77 (C.D. Cal. June
23 22, 2012) (“[F]ederal courts applying California law have concluded that stacking is appropriate.”);
24 *see also O’connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D. Cal.
25 June 30, 2016) (“Finally, Plaintiffs ignore the potential for stacking of PAGA penalties related to
26 wage-and-hour claims other than the gratuities and expense reimbursement claim, i.e., meal and rest
27 breaks, minimum wage and overtime, and workers’ compensation.”).

28 68. Labor Code sections 226(f), 1198.5(k), and 1174.5 also imposes liability on Defend-

1 ants for their policy of refusing to provide required records in the amount of \$750, \$750, and \$500,
2 respectively, per aggrieved employee.

3 EXHAUSTION OF ADMINISTRATIVE REMEDIES

4 69. On or about June 22, 2020, Plaintiffs filed a notice of claims with the LWDA and sent
5 a copy to Defendants by certified mail. **Exhibit A.** As of the date of filing this complaint, Plaintiff
6 has not received a response from the LWDA. As of 65 days from June 22, 2020, all requirements for
7 administrative exhaustion have been met. Labor Code § 2699.3(a)(2); *Magadia v. Wal-Mart Associ-*
8 *ates, Inc.*, 319 F.Supp.3d 1180 (N.D. Cal. 2018); *Bradescu v. Hillstone Rest. Grp., Inc.*, No. SACV
9 13- 1289-GW RZX, 2014 WL 5312546, at *10 (C.D. Cal. Sept. 18, 2014), *order confirmed*, No.
10 SACV 13-1289-GW RZX, 2014 WL 5312574 (C.D. Cal. Oct. 10, 2014).

11 DEMAND FOR JURY TRIAL

12 Pursuant to California Code of Civil Procedure section 631, Plaintiff demands a trial by jury
13 on all issues so triable.

1
2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff respectfully prays judgment as follows:

4 A. For actual and liquidated damages according to proof at trial in an amount exceeding
5 \$500,000;

6 B. For statutory and civil penalties and special damages, according to proof at trial in an
7 amount exceeding \$500,000;

8 C. For pre- and post-judgment interest on monetary damages;

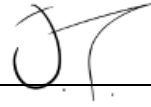
9 D. Preliminary and permanent injunctive relief;

10 E. For reasonable attorney's fees and costs and expert fees and costs as allowed by law;
11 and

12 F. For such other relief as this Court deems just and proper.

13 DATED: October 13, 2020

Respectfully Submitted,

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15 By:  _____

16 Justin Toobi, Esq.
17 Attorney for Plaintiff
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EXHIBIT 1

JUSTIN TOOBI, ESQ.
724 S. Spring St., Suite 201
Los Angeles, California 90017
Tel.: (310) 435-9407
Email: Justin@ToobiEsq.com

June 17, 2020

Filed Via LWDA's PAGA Claim Notice Online Form

Copy Sent Via Certified Mail

SANBORN CHEVROLET, INC.
1210 S CHEROKEE LANE
LODI CA 95240

P.O. BOX 1057
LODI CA 95241

Re: *Timothy Shockley v. SANBORN CHEVROLET, INC.; California Labor Code § 2699.3 Notice*

To Whom It May Concern:

This letter serves as notice pursuant to Labor Code § 2699.3 that TIMOTHY SHOCKLEY seeks to bring individual and representative claims under the Private Attorney's General Act ("PAGA") on behalf of himself and all non-exempt employees employed by **SANBORN CHEVROLET, INC.** ("Defendant") for the last four years based on:

1. Defendant's failure to pay the minimum wage for all hours worked (Labor Code §§ 1182.12, 1771, 1774, 1194, 1194.2, 1197, 1197.1, 1198);
2. Defendant's failure to pay overtime wages (Lab. Code §§ 510, 119);
3. Defendant's failure to provide compliant meal periods or compensation in lieu thereof (Lab. Code §§ 226.7, 512(a), 1198, IWC Wage Order No. 4);
4. Defendant's failure to provide compliant rest periods or compensation in lieu thereof (Labor Code §§ 226.7, 512, and IWC Wage Order No. 4);
5. Defendant's failure to provide complete and accurate wage statements (Labor Code §§ 226, 226.2, 226.3);
6. Failure to timely pay all wages due (Labor Code §§ 201-204, 210);
7. Deceptive/fraudulent business practices based on the foregoing (Business and Professions Code § 17200);
8. Penalties based on the foregoing pursuant to the Private Attorney Generals Act

Plaintiff worked as an auto-mechanic for Defendant from 2014 to April 14, 2020. Plaintiff would clock in and clock out between jobs, and was not paid for time under Defendant's control where he was "on call." Plaintiff was also not provided meal and rest periods compliant with the Labor Code.

I. Defendant Failed to Pay Wage Owed and The Minimum Wage For All Hours Worked

Defendant failed to pay the minimum wage for all hours worked. California Labor Code sections 1182.12, 1775, 1194, 1197, 1197.1, and 1198 provide that payment of a wage less than the minimum wage as set by statute, commission, or by the general prevailing rate is unlawful. Compensable work time is defined in Wage Order No. 4 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

Throughout his employment, Mr. Shockley was not paid for all hours worked. Mr. Shockley would clock out between each mechanic job and was not paid for time waiting “on call” for the next job to be assigned to him.

Accordingly, Mr. Shockley is owed his unpaid wages, unpaid minimum wages and liquidated damages. Defendant is also liable for PAGA penalties for these violations in the amount of \$100 per initial violation and \$200 for each subsequent violation, per employee per pay period for each of the minimum wage and failure to pay wages violations.

II. Defendant Failed to Pay Overtime Wages

Industrial Wage Order No. 4 provides that Defendant was required to pay Mr. Shockley at one-and-a-half times his hourly rate for all hours worked in excess of eight hours in a day or more than 40 hours in a workweek. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including commissions, non-discretionary bonuses and incentive pay. *Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th 542, 573 (2018), *as modified* (Apr. 25, 2018).

Mr. Shockley was not paid 1.5 times his regular for all of the hours he worked in excess of eight hours in a day because Defendant (1) failed to pay him for all time worked as stated above and (2) paid hours worked in excess of eight hours in a day or forty in a week at his regular rate. Defendant would pay over 40 hours per week at his straight time rate.

Accordingly, Plaintiff is owed his unpaid wages, overtime wages, and liquidated damages. Defendant is also liable for PAGA penalties for these violations in the amount of \$100 per initial violation and \$200 for each subsequent violation, per employee per pay period where there was an overtime violation.

III. Defendant Failed to Provide Compliant Meal Periods and Failed to Pay Required Meal Period Premiums

Section 11 of IWC Wage Order No. 4 provides that “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes... Unless the 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. An on duty meal period shall be permitted only when the nature of the work prevents an employee from

being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time. ”

Throughout his employment, Mr. Shockley worked for Defendant for at least eight (8) hours each workday, and often well over 10 hours in a workday. Mr. Shockley was not provided a compliant meal period on any day he worked for Defendant, despite the nature of his work not preventing him from taking a meal period and Mr. Shockley never agreed in writing to on-the-job paid meal period. Mr. Shockley was never provided a second meal period when working over 10 hours in a workday.

Accordingly, Mr. Shockley is owed one hour of premium pay for each day worked where one or more meal periods was not provided. Lab. Code §§ 226.7; 558. Defendant is also liable for PAGA penalties for these violations in the amount of \$100 per initial violation and \$200 for each subsequent violation, per employee per pay period.

IV. Defendant Failed to Provide Compliant Rest Periods and Failed to Pay Required Rest Period Premiums

With respect to rest periods, employees must be afforded a paid rest period of 10 minutes per four hours of work, or major fraction thereof. “Employers must also “relinquish any control over how employees spend their period time, and relieve their employees of all duties” during the rest period. *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 273, 385 P.3d 823, 834 (2016), *as modified on denial of reh'g* (Mar. 15, 2017) (“What they require instead is that employers—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.”). Under IWC Wage Order No. 4, Section 12, “Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”

Mr. Shockley would clock out for any time he was not working, and as such any rest periods provided were not counted as hours worked in violation of IWC Wage Order No. 4, Section 12.

Accordingly, Mr. Shockley is owed one hour of premium pay for each day worked where one or more rest periods was not provided. Lab. Code §§ 226.7; 558. Defendant is also liable for PAGA penalties for these violations in the amount of \$100 per initial violation and \$200 for each subsequent violation, per employee per pay period.

V. Defendant Failed to Provide Complete and Accurate Wage Statements

Defendant failed to provide Mr. Shockley and similarly situated employees with complete and accurate wage statements setting forth all amounts earned during a pay period, including without limitation its failure to set forth the accurate number of hours worked, the proper overtime hours, and earned meal or rest period premium payments. Mr. Shockley was not provided accurate wage statements for the entirety of his employment.

As such, Defendant is liable for (1) the greater of actual damages or \$4,000 per affected employee and (2) PAGA penalties for each noncompliant wage statement, in addition to

reasonable attorney's fees and costs. Lab. Code § 226; *Brewer v. Premier Golf Properties, LP*, 168 Cal. App. 4th 1243, 1253 (2008) ("Moreover, even if Brewer had obtained section 226.3 penalties, that section merely provides for civil penalties in addition to the penalties under section 226 that Brewer recovered here, and we construe the language of section 226.3 as designed to insure that the recovery of any penalties under section 226.3 would not preclude the other statutory penalties available for wage stub violations").

VI. Defendant Failed to Timely Pay All Wages Due to Mr. Shockley at Termination and Has Failed to Timely Pay All Wages Due to Current Employees

Defendant failed to timely pay all wages due. Labor Code section 204 requires employers to pay California employees on regularly-established paydays, no less frequently than twice per month. Employers are required to post a conspicuous notice at the place of work or at the office where employees are paid, specifying the regular paydays and time and place of payment. Lab. Code § 207. For employees who are terminated or quit, final wage payments are due immediately or no later than 72 hours after quitting, respectively. *See* Lab. Code §§ 201-202.

Defendant terminated Mr. Shockley in May 2020. Defendant failed to pay all wages due on termination of employment to Mr. Shockley, and those similarly situated, in violation of Lab. Code § 203. Moreover, as Mr. Shockley *still* has not been paid for all time worked or overtime wages owed to him, Defendant's violation of section 203 remains ongoing. Mr. Shockley is entitled to one day's wages in waiting time penalties, up to a maximum of 30 days.

Additionally, as Defendant failed to timely pay all wages earned during employment, it is subject to a civil penalty in an amount equal to \$100 per initial violation and \$200 for each subsequent violation (per employee) *plus* 25% of the amounts unlawful withheld. Lab. Code § 210.

* * * * *

If you believe that a discussion would be productive, I'm available by phone or email.

Sincerely

By: 

JUSTIN TOOBI, ESQ.



Justin Toobi <justin@toobiesq.com>

Thank you for submission of your PAGA Case.

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Mon, Jun 22, 2020 at 2:06 PM

To: "justin@toobiesq.com" <justin@toobiesq.com>

6/22/2020

LWDA Case No. LWDA-CM-794203-20

Law Firm : Justin Toobi, Esq.

Plaintiff Name : Timothy Shockley

Employer: Sanborn Chevrolet, Inc.

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm