

1 NICHOLAS J. FERRARO (State Bar No. 306528)
LAUREN N. VEGA (State Bar No. 306525)
2 FERRARO EMPLOYMENT LAW, INC.
2305 Historic Decatur Road, Suite 100
3 San Diego, California 92106
Tel: (619) 693-7727 / Fax: (619) 350-6855
4 nick@ferraroemploymentlaw.com
lauren@ferraroemploymentlaw.com
5 Attorneys for Plaintiff and the Aggrieved Employees

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO – NORTH COUNTY**
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11 VERONICA NOLAN, on behalf of the State of
California and all aggrieved employees;

12
13 Plaintiff,

14 vs.

15 BOB BAKER AUTOMOTIVE INC, a
California corporation; BOB BAKER
16 VOLKSWAGEN, a California corporation;
17 BAKER AUTOS, INC., a California
corporation; BAKER CARLSBAD, INC., a
18 California corporation; BOB BAKER
ENTERPRISES, INC., a California corporation;
19 and DOES 1 through 50, inclusive,

20 Defendants.
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Case No. 37-2020-00030618-CU-OE-NC

**REPRESENTATIVE ACTION
COMPLAINT**

1. Civil Penalties for Failure to Pay All Regular and Minimum Wages
2. Civil Penalties for Failure to Pay All Overtime Wages
3. Civil Penalties for Meal Period Violations
4. Civil Penalties for Rest Period Violations
5. Civil Penalties for Untimely Payment of Wages
6. Civil Penalties for Wage Statement Violations
7. Civil Penalties for Failure to Timely Pay All Wages Upon Separation of Employment
8. Civil Penalties for Failure to Reimburse Business Expenses
9. Civil Penalties for Recordkeeping Violations

1 Plaintiff VERONICA NOLAN (“Plaintiff”), as an individual and on behalf of the State of
2 California as an “aggrieved employee” acting as a private attorney general under the Labor Code
3 Private Attorneys General Act of 2004 (“PAGA,” California Labor Code § 2698, *et seq.*), brings
4 this representative action against Defendants BOB BAKER AUTOMOTIVE INC., a California
5 corporation; BOB BAKER VOLKSWAGEN, a California corporation; BAKER AUTOS, INC., a
6 California corporation; BAKER CARLSBAD, INC., a California corporation; BOB BAKER
7 ENTERPRISES, INC., a California corporation; and DOES 1 through 50, inclusive;; and DOES 1
8 through 50 (hereinafter collectively referred to as “Defendants”), alleging as follows:

9 **INTRODUCTION**

10 1. This is a representative action brought under the California Labor Code.

11 2. This complaint challenges systemic unlawful employment policies and practices that
12 resulted in violations of the Labor Code and IWC Wage Orders against individuals who worked for
13 Defendants.

14 3. Plaintiff alleges on behalf of herself and the aggrieved employees that she received
15 non-compliant wage statements, was not reimbursed for necessary business expenses, did not
16 receive all meal and rest periods (or corresponding premiums), and was underpaid wages each pay
17 day and upon separation of employment.

18 4. Plaintiff files this case as a PAGA-only action to recover civil penalties for the
19 aggrieved employees and the State of California and to effect change upon Defendants’ workplace
20 policies and practice in a manner consistent with the underlying enforcement purpose of the PAGA.

21 **JURISDICTION & VENUE**

22 5. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
23 California Constitution.

24 6. Venue as to each defendant is proper in this judicial district under Code of Civil
25 Procedure sections 395 and 395.5 because Defendants conduct substantial business in this county,
26 employed Plaintiff in this county, and committed some of the alleged violations in this county.

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PARTIES

7. Plaintiff VERONICA NOLAN worked for Defendants in San Diego's North County until April 2020 as an hourly, non-exempt employee.

8. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action with respect to the PAGA claims.

9. Plaintiff is informed, believes and alleges that Defendant BOB BAKER AUTOMOTIVE, INC. is a California corporation that does business throughout California, including San Diego, California.

10. Plaintiff is informed, believes and alleges that Defendant BOB BAKER VOLKSWAGEN is a California corporation that does business throughout California, including San Diego, California.

11. Plaintiff is informed, believes and alleges that Defendant BAKER AUTOS, INC. is a California corporation that does business throughout California, including San Diego, California.

12. Plaintiff is informed, believes and alleges that Defendant BAKER CARLSBAD, INC. is a California corporation that does business throughout California, including San Diego, California.

13. Plaintiff is informed, believes and alleges that Defendant BOB BAKER ENTERPRISES, INC. is a California corporation that does business throughout California, including San Diego, California.

14. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes and alleges that each of the fictitious defendants is responsible in some manner for the acts and omissions alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and capacities when they become known.

15. Plaintiff is informed, believes and alleges that all defendants in this action are employers and/or joint employers and part of an integrated employer enterprise, as each defendant exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved

1 employees, suffers and permits them to work, and engages the workforce creating a common law
2 employment relationship. Additionally, all defendants have common ownership, common
3 management, interrelationship of operations, and centralized control over labor relations and are
4 therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and
5 omissions alleged herein.

6 16. Plaintiff is informed, believes and alleges that each defendant acted in all respects
7 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
8 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants,
9 such that the acts and omissions of each defendant are legally attributable to all others.

10 17. Plaintiff is informed, believes and alleges that the above-mentioned DOE defendants
11 violated and caused to be violated Labor Code and IWC Wage Order provisions regulating
12 minimum wages and days of work and Labor Code sections 203, 226, 226.7, 1193.6, 1194 and/or
13 2802 and may be held liable as the employer for such violation, as provided in Labor Code
14 section 558.1.

15 **GENERAL ALLEGATIONS**

16 18. Defendants violated Labor Code section 226(a)(9) because they failed to accurately
17 state each pay period on the statutorily-required wage statement all applicable hourly rates in effect
18 and the corresponding number of hours worked at each hourly rate by the aggrieved employees.
19 The incorrect hourly rates and number of hours worked include those listed on wage statements as
20 “Rest & Rec . C” and “R&R,” which were intended to denote rest and recovery periods paid to
21 aggrieved employees under Cal. Code. Regs., tit. 8 § 1170, subd. 1, as explained in *Vaquero v.*
22 *Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98, 105-118. As one illustrative example, this
23 violation occurred during Plaintiff’s pay period of 03/01/2020 to 03/15/2020 (pay date of
24 03/20/2020), whereby 0.80 hours is the incorrect number of hours worked and because \$35.2125 is
25 the incorrect hourly rate.

26 19. Regarding current and former employees who earned hourly compensation plus non-
27 discretionary bonuses and commissions, Plaintiff alleges that those aggrieved employees were paid
28 overtime at the incorrect hourly rate. Therefore, Defendants separately violated Labor Code section

226(a)(1), (2), (5), and (9) as the respective wage statements do not correctly itemize gross wages earned, total hours worked, net wages earned, or the applicable hourly rates in effect during the applicable pay periods.

20. In violation of Labor Code section 226(a)(2), Defendants did not correctly list the total hours worked each pay period on wage statements for Plaintiff and other aggrieved employees. The wage statements issued by Defendants do not list the total hours worked during the pay period. The hours listed for “regular” and “overtime,” among other categories, do not match or total the hours recorded on the time punches (i.e., Time and Detail Attendance Reports) for Plaintiff or the aggrieved employees. Plaintiff alleges that this is because Defendants maintained a pattern, practice and uniform administration of corporate policy of adjusting and modifying time records and also failing to compensate employees for time worked “off the clock.”

21. In further violation of Labor Code § 226(a)(1)-(9), in pay periods where employees did not earn wages based on a commission or piece rate plan, Plaintiff alleges on information and belief that Defendants failed to accurately state the correct gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect and the corresponding number of hours worked at those rates. Plaintiff alleges that this was due to a miscalculation of the regular rate of pay for the purposes of paying overtime.

22. In violation of Labor Code § 226(a)(8), Plaintiff alleges on information and belief that Defendants failed to list the proper name and address of the legal entity that is the employer and on her wage statements and the wage statements of the aggrieved employees.

23. Additionally, Defendants violated Labor Code section 2802 by underpaying cell phone reimbursements to Plaintiff and aggrieved employees. Defendants either failed to provide reimbursements or underpaid cell phone reimbursements to aggrieved employees like Plaintiff who were required to use their personal cell phones for work-related purposes. Specifically, Plaintiff and other aggrieved employees used their personal cell phones to communicate with customers, were required to be responsive to the customers during waking hours, including on days where they were not scheduled to work, frequently texted customers, and accessed, received, and sent emails through their work-provided email accounts. Aggrieved employees like Plaintiff were required to

1 list their personal cell phone number on the Defendants-branded business card. Defendants
2 reimbursement of \$10.00 semi-monthly (for a monthly total of \$20.00) is an insufficient
3 reimbursement for the level of employees' work-related use of personal cell phones and shifts the
4 operating expenses of Defendants to their workforce.

5 24. Despite the foregoing facts, Defendants tacitly reveals that it understands the
6 "Personal Mobile/PDA Device Supplement" of \$10.00 is grossly insufficient to reimburse
7 employee expenses. The policy attempts to make it seem like it was an employee choice to use his
8 or her personal cell phone for work-related use: "The Dealership does not require or recommend
9 that you use your personal device, but acknowledges that sales associates may choose to do so as a
10 matter of personal convenience." Employees earned commissions for sales by using their personal
11 phone and were required to list their personal number on the company business card, rendering it
12 impossible to perform their jobs without the use of their personal cell phones. *See e.g., Cochran v.*
13 *Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137. Defendants also failed to reimburse
14 other (non-sales) employees for a reasonable percentage of their cell phone bill when they required
15 to use their personal cell phones for work-related purposes.

16 25. Moreover, Defendants violated Labor Code sections 226.7, 512 and the IWC Wage
17 Orders by failing to consistently provide lawful meal periods or pay meal period premiums in lieu
18 thereof. Defendants systemically violated Labor Code sections 226.7 and 512 by failing to provide
19 complaint meal periods, as evidenced by an extensive collection of "Time Clock Correction" forms
20 that aggrieved employees were required to sign without receiving a corresponding meal period
21 premium.

22 26. Defendants failed to consistently provide timely, off-duty 30-minute meal periods to
23 Plaintiff and other aggrieved employees within the first five hours of work, and timely second off-
24 duty 30-minute meal periods to the extent they worked shifts of 10 hours or more, in violation of
25 Labor Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. Although
26 Defendants' meal period violations apply to all aggrieved employees, as an illustrative example,
27 Plaintiff and other aggrieved sales employees were required to and did in fact work through meal
28 periods as they were required and expected to sell to earn commissions. Plaintiff and other

1 aggrieved employees were also expected and required by Defendants to refrain from leaving the
2 premise for meal periods so that they could remain available for work. Any meal periods taken
3 under these circumstances (i.e., on-site) cannot be considered duty-free. Plaintiffs and the
4 aggrieved employees' meal periods were often late, short, interrupted, or missed entirely due to
5 Defendants' policies and practices.

6 27. Defendants' policies, practices and management directives, on some occasions,
7 required Plaintiff and other aggrieved employees to clock out for meal periods, regardless of
8 whether meal periods were actually taken. Defendants would have managers "correct" and "adjust"
9 hours worked to avoid the payment of meal period premiums and would often require employees to
10 sign "Time Clock Correction Forms" to adjust hours worked in an effort to avoid the records
11 showing evidence of meal period non-compliance. Defendants knew Plaintiff and other aggrieved
12 employees performed work during meal periods but did not pay all required meal period premiums.
13 Additionally, Plaintiff alleges that Defendants did not maintain a lawful first meal period waiver yet
14 failed to pay premiums for missed meal periods in shifts of 6 hours or less.

15 28. When Defendants did not provide fully-compliant meal periods, Defendants failed to
16 pay Plaintiff and other aggrieved employees a meal period premium in violation of Labor Code
17 section 226.7. On information and belief, Plaintiff alleges that Defendants failed to abide by their
18 own written policies regarding the payment of meal period premiums in such cases. Although
19 Defendants did pay Plaintiff and other aggrieved employees some period premiums during their
20 employment (the wage statements do not specify whether these were for meal or rest periods, or
21 both), Plaintiff does not know why those premiums were paid, where other premiums were not for
22 instances in which her meal period was missed or otherwise non-compliant. Regardless, Plaintiff
23 experienced more non-compliant meal periods and was not paid all required premiums during her
24 employment.

25 29. For the same reasons described with respect to meal periods, including customer and
26 management demands and the sales incentives of Plaintiff and other aggrieved employees,
27 Defendants violated Labor Code sections 226.7 and 516 and the IWC Wage Orders by failing to
28 consistently authorize and permit lawful rest periods or pay rest period premiums in lieu thereof.

1 Similarly, Plaintiff and the aggrieved employees were restricted from leaving the worksite due to
2 sales and employment demands, rendering the rest periods not duty free. *See Augustus v. AMB*
3 *Security Services, Inc.* (2016) 5 Cal. 5th 257, 269.

4 30. Defendants systemically violated Labor Code sections 510, 1194, and 1198 and the
5 IWC Wage Orders by miscalculating the regular rate of pay for employees who earned additional
6 forms of remuneration that were not properly factored into their respective overtime regular rate of
7 pay.

8 31. Furthermore, Defendants violated sections 510, 1182.12, 1197, 1194, and 1198 and
9 the IWC Wage Orders by failing to pay for all regular and overtime hours worked by Plaintiff and
10 the aggrieved employees.

11 32. Specifically, with respect to the “Time Clock Correction Forms,” these required
12 adjustments of time entries to avoid meal periods reduced the amount of paid hours and eligible
13 overtime hours for aggrieved employees by reducing the total number of hours worked in a
14 workweek or workday. As a result, Defendants underpaid overtime and regular wages (including
15 minimum wage) to aggrieved employees in a manner that can be proven based on an analysis of
16 Time Clock Correction Forms, and time records alone, supported by relevant testimony.

17 33. Similarly, Defendants’ employees worked off-the-clock outside of their scheduled
18 hours and during meal periods without compensation. The aggrieved employees in various
19 positions, including sales, finance, and service, among others, routinely worked throughout their
20 shift without receiving a lawful meal period. However, meal periods were nevertheless recorded or
21 retroactively “corrected” so that the time records portray the meal period as taken. The result of this
22 policy and practice is that employees are deprived of pay for hours worked during time that is
23 rendered uncompensated due to the illusory recording of certain meal periods, which are unpaid and
24 not included in daily hours worked for purposes of wage payment.

25 34. Plaintiff and certain other aggrieved employees maintained access to work-related
26 emails and answered and responded to work-related emails and telephone calls outside of scheduled
27 working hours. For employees paid on a commission or piece rate basis, they were not
28 compensated at the lawful minimum wage for these hours worked when their commission dropped

1 below the threshold necessary for payment on a commission or piece rate basis to apply. For
2 employees paid on an hourly basis who were similarly incentivized and who maintained access to
3 their work email address on their personal cellular devices, these aggrieved employees also worked
4 off-the-clock hours and were not paid for this time, rendering regular and overtime hours unpaid.

5 35. As a result of these transgressions, Defendants failed to pay aggrieved employees all
6 wages earned, on time, each pay period in violation of Labor Code section 204 and upon separation
7 of employment in violation of Labor Code sections 201 through 203.

8 36. Lastly, as a result of the foregoing issues, Defendants violated Labor Code section
9 1174 and the IWC Wage Orders by failing in their affirmative obligation to maintain accurate
10 records showing the daily hours worked and wages paid to the aggrieved employees.

11 37. In closing, Plaintiff is informed, believes and alleges that Defendants have engaged
12 in willful violations of the Labor Code and IWC Wage Orders by creating and maintaining policies,
13 practices, and customs that knowingly deny Plaintiff and aggrieved employees their legal rights and
14 benefits, entitling them to recover civil penalties under the PAGA.

15 **PAGA ALLEGATIONS**

16 38. “Notwithstanding any other provision of law, any provision of this code that
17 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
18 Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a
19 violation of this code, may, as an alternative, be recovered through a civil action brought by an
20 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
21 to the procedures specified in Section 2699.3.” (Labor Code § 2699(a)).

22 39. Plaintiff seeks to recover civil penalties as an individual aggrieved employee and on
23 behalf of the State of California and all other current and former non-exempt employees of
24 Defendants who work or worked within the State of California within the one-year period prior to
25 the date on which Plaintiff first provided written notice to the Labor and Workforce Development
26 Agency and Defendants under Labor Code § 2699.3 and continuing through the present (the
27 “aggrieved employees” and the “PAGA Period”).

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1 40. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants
2 and suffered one or more of the Labor Code violations committed by Defendants and alleged in this
3 Complaint.

4 41. On June 18, 2020, Plaintiff gave written notice by online filing with the LWDA and
5 by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
6 violated, including the facts and theories to support the alleged violations. Plaintiff paid the
7 requisite filing fee to the LWDA.

8 42. On June 25, 2020, Plaintiff gave written notice to the LWDA and to Defendants of
9 additional defendants to be named in this civil action via a supplemented notice.

10 43. Attached to this Complaint as “Exhibit A” are Plaintiff’s Notice of Labor Code
11 Violations submitted to the LWDA on June 18, 2020 and Plaintiff’s Supplemented Notice of Labor
12 Code Violations submitted to the LWDA on June 25, 2020. Plaintiff incorporates these notices in
13 this Complaint as if fully set forth herein.

14 44. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,
15 Defendants did not give written notice by certified mail to Plaintiff providing a description of any
16 actions taken to cure the alleged violations.

17 45. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
18 violations, without any notice of cure from them or notice from the LWDA of its intent to
19 investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff
20 exhausted all prerequisites and commences this civil action under Labor Code § 2699.

21 **FIRST CAUSE OF ACTION**

22 **CIVIL PENALTIES FOR FAILURE TO PAY**

23 **ALL REGULAR AND MINIMUM WAGES (PAGA)**

24 **Labor Code §§ 2698, *et seq.***

25 46. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

26 47. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,
27 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
28 and Workforce Development Agency or any of its departments, divisions, commissions, boards,

1 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
2 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
3 former employees pursuant to the procedures specified in Section 2699.3 .”

4 48. Labor Code section 2699(f) provides: “For all provisions of this code except those
5 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
6 of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs
7 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
8 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
9 employee per pay period for each subsequent violation.”

10 49. Labor Code section 558(a) provides: “Any employer or other person acting on behalf
11 of an employer who violates, or causes to be violated, a section of this chapter or any provision
12 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
13 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
14 underpaid employee for each pay period for which the employee was underpaid in addition to an
15 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred
16 dollars (\$100) for each underpaid employee for each pay period for which the employee was
17 underpaid in addition to an amount sufficient to recover underpaid wages.”

18 50. Labor Code section 1197.1(a) provides: “Any employer or other person acting either
19 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
20 any employee a wage less than the minimum fixed by an applicable state or local law, or by an
21 order of the commission, shall be subject to a civil penalty ... and any applicable penalties imposed
22 pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one
23 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
24 underpaid ... and any applicable penalties imposed pursuant to Section 203. (2) For each
25 subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each
26 underpaid employee for each pay period for which the employee is underpaid regardless of whether
27 the initial violation is intentionally committed.”

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1 51. Plaintiff does not seek for any cause of action in this Complaint under PAGA any
2 amounts that are not recoverable pursuant to Labor Code section 2699 *et seq.* (i.e., underpaid
3 wages).

4 52. Defendants willfully failed in their affirmative obligation to pay Plaintiff and
5 aggrieved employees at least the lawful minimum wage for all hours worked in violation of Labor
6 Code sections 1182.12, 1197 and 1198 and the IWC Wage Orders (the “Hours and Days of Work”
7 and “Minimum Wages” sections of the applicable orders).

8 53. Specifically, Plaintiff and the aggrieved employees worked off the clock and were
9 subject to time sheet adjustments that rendered certain hours worked unpaid, as addressed in the
10 above sections of this Complaint.

11 54. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
12 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
13 by Labor Code sections 558, 1197.1, and 2699(a) and (f)(2), in addition to interest, attorneys’ fees,
14 and costs to the extent permitted by law, including under Labor Code section 2699(g).

15 **SECOND CAUSE OF ACTION**

16 **CIVIL PENALTIES FOR FAILURE TO PAY**

17 **ALL OVERTIME WAGES (PAGA)**

18 **Labor Code §§ 2698, *et seq.***

19 55. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

20 56. Defendants failed in their affirmative obligation to pay Plaintiff and aggrieved
21 employees no less than one and one-half times their respective “regular rate of pay” for all hours
22 worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on
23 the seventh day of work in any one workweek, and no less than twice their respective “regular rate
24 of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
25 day of a workweek in violation of Labor Code sections 510 and 1198 and the IWC Wage Orders
26 and the IWC Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

27 57. Specifically, Plaintiff and the aggrieved employees worked off the clock and were
28 subject to time sheet adjustments that rendered certain hours worked unpaid at the lawful overtime

1 rate, as addressed in the above sections of this Complaint. Additionally, Defendants failed to
2 include all forms of remuneration in the regular rate of pay for purposes of overtime computation
3 and payment for the aggrieved employees, as addressed in the above sections of this Complaint.

4 58. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
5 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
6 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
7 to the extent permitted by law, including under Labor Code section 2699(g).

8 **THIRD CAUSE OF ACTION**

9 **CIVIL PENALTIES FOR MEAL PERIOD VIOLATIONS (PAGA)**

10 **Labor Code §§ 2698, *et seq.***

11 59. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

12 60. Defendants willfully failed in their affirmative obligation to consistently provide
13 Plaintiff and aggrieved employees compliant, duty-free meal periods of not less than 30 minutes
14 beginning before the fifth hour of hour for each work period of more than five hours per day and a
15 second on-duty meal period of not less than 30 minutes beginning before the tenth hour of hour of
16 work in violation of Labor Code sections 226.7 and 512 and the IWC Wage Orders (the "Meal
17 Periods" sections of the applicable orders).

18 61. Further, Defendants willfully failed in their affirmative obligation to consistently pay
19 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of
20 compensation for each workday that a fully compliant meal period was not provided, in violation of
21 Labor Code sections 226.7 and the IWC Wage Orders.

22 62. Specifically, Plaintiff and the aggrieved employees were required to work and
23 remain on site during meal periods, were subject to unlawful meal period adjustments, worked
24 through recorded meal periods, experienced non-compliant meal periods, and were not paid meal
25 period premiums when they were due based on these facts and also based on the recorded time
26 entries maintained by Defendants, as addressed in the above sections of this Complaint.

27 63. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
28 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required

1 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
2 to the extent permitted by law, including under Labor Code section 2699(g).

3 **FOURTH CAUSE OF ACTION**

4 **CIVIL PENALTIES FOR REST PERIOD VIOLATIONS (PAGA)**

5 **Labor Code §§ 2698, *et seq.***

6 64. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

7 65. Defendants willfully failed in their affirmative obligation to consistently authorize
8 and permit Plaintiff and aggrieved employees to receive compliant, duty-free rest periods of not less
9 than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor
10 Code sections 226.7 and 516 and the IWC Wage Orders (the "Rest Periods" sections of the
11 applicable orders).

12 66. Further, Defendants willfully failed in their affirmative obligation to consistently pay
13 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of
14 compensation for each workday that a fully compliant rest period was not provided, in violation of
15 Labor Code sections 226.7 and the IWC Wage Orders.

16 67. Specifically, Plaintiff and the aggrieved employees were required to work and
17 remain on site during rest periods, worked through rest periods, and did not receive lawful rest
18 period premiums when they were due, as addressed in the above sections of this Complaint.

19 68. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
20 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
21 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
22 to the extent permitted by law, including under Labor Code section 2699(g).

23 **FIFTH CAUSE OF ACTION**

24 **CIVIL PENALTIES FOR UNTIMELY PAYMENT OF WAGES (PAGA)**

25 **Labor Code §§ 2698, *et seq.***

26 69. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

27 70. Defendants willfully failed in their affirmative obligation to timely pay all wages and
28 premiums earned by Plaintiff and aggrieved employees twice during each calendar month on days

1 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
2 basis) and on the regularly-scheduled weekly payday for any weekly employees, in violation of
3 Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of
4 the applicable orders).

5 71. Specifically, as set forth in this Complaint, Defendants failed to pay wages earned by
6 Plaintiff and the aggrieved employees on time, in full, each pay date.

7 72. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
8 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
9 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
10 to the extent permitted by law, including under Labor Code section 2699(g).

11 **SIXTH CAUSE OF ACTION**

12 **CIVIL PENALTIES FOR WAGE STATEMENT VIOLATIONS (PAGA)**

13 **Labor Code §§ 2698, *et seq.***

14 73. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

15 74. Labor Code section 226.3 provides: “Any employer who violates subdivision (a) of
16 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
17 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
18 each violation in a subsequent citation, for which the employer fails to provide the employee a
19 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
20 The civil penalties provided for in this section are in addition to any other penalty provided by law.”

21 75. Defendants failed in their affirmative obligation provide accurate itemized wage
22 statements to Plaintiff and aggrieved employees in violation of Labor Code section 226(a).

23 76. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
24 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
25 by Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and
26 costs to the extent permitted by law, including under Labor Code section 2699(g).

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**CIVIL PENALTIES FOR FAILURE TO TIMELY PAY ALL WAGES UPON
SEPARATION OF EMPLOYMENT (PAGA)**

80. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS EXPENSES (PAGA)

82. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and aggrieved employees for all necessary expenditures, losses, expenses and costs incurred by them in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

1 84. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
2 aggrieved employees and the State of California for civil penalties as required by Labor Code
3 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
4 by law, including under Labor Code section 2699(g).

5 **NINTH CAUSE OF ACTION**

6 **CIVIL PENALTIES FOR RECORDKEEPING VIOLATIONS (PAGA)**

7 **Labor Code §§ 2698, *et seq.***

8 85. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

9 86. Labor Code section 1174 provides: "Every person employing labor in this state
10 shall: ...(d) Keep, at a central location in the state or at the plants or establishments at which
11 employees are employed, payroll records showing the hours worked daily by and the wages paid to,
12 and the number of piece-rate units earned by and any applicable piece rate paid to, employees
13 employed at the respective plants or establishments. These records shall be kept in accordance with
14 rules established for this purpose by the commission, but in any case shall be kept on file for not
15 less than three years."

16 87. Labor Code section 1174.5 provides: "Any person employing labor who willfully
17 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete
18 records required by subdivision (d) of Section 1174 ..., shall be subject to a civil penalty of five
19 hundred dollars (\$500)."

20 88. Defendants willfully failed in their affirmative obligation to maintain accurate
21 records showing the hours worked daily and wages paid to the aggrieved employees, in violation of
22 Labor Code section 1174.

23 89. Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing
24 in their affirmative obligation to maintain accurate records showing the hours worked daily and
25 wages paid to the aggrieved employees, as a result of the foregoing issues set forth in this
26 Complaint.

27 90. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
28 aggrieved employees and the State of California for civil penalties as required by Labor Code

1 section 1174.5, in addition to interest, attorneys' fees, and costs to the extent permitted by law,
2 including under Labor Code section 2699(g).

3 **PRAYER FOR RELIEF**

4 Plaintiff, as an individual and on behalf of the aggrieved employees, State of California, and
5 as a representative under the PAGA, prays for judgment as follows:

- 6 a. For this action to be maintained as a representative action under the PAGA and for
7 Plaintiff and counsel to be provided with all enforcement capability as if the action
8 were brought by the State of California or the California Division of Labor
9 Enforcement;
- 10 b. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 11 c. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
12 permitted by law, including under California Labor Code sections 226, 1194, 2802,
13 2699(g) and Code of Civil Procedure section 1021.5;
- 14 d. For such other relief the Court deems just and proper.
- 15

16 Dated: August 28, 2020

FERRARO EMPLOYMENT LAW, INC.

17 

18 NICHOLAS J. FERRARO, ESQ.

19 LAUREN N. VEGA, ESQ.

20 Attorney for Plaintiff Veronica Nolan

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EXHIBIT A

FERRARO

EMPLOYMENT LAW

NICHOLAS J. FERRARO
nick@ferraroemploymentlaw.com

June 25, 2020

SUPPLEMENTED NOTICE OF LABOR CODE VIOLATIONS
LABOR CODE SECTIONS 2698 *et seq.*

PAGA NOTICE VIA ONLINE FILING

California Labor and Workforce Development Agency
<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

PAGA NOTICE VIA EMAIL AND CERTIFIED U.S. MAIL (RETURN RECEIPT)

BAKER AUTOS, INC.
c/o Wade Poulson, Esq.
5531 Cancha de Golf, Suite 107
Rancho Santa Fe, CA 92091

BAKER CARLSBAD, INC.
c/o Wade Poulson, Esq.
5531 Cancha de Golf, Suite 107
Rancho Santa Fe, CA 92091

Via Email: Bruce Carter, Director of H.R.
brucec@bobbakerautomotive.com

Dear Labor Enforcement Officer and Mr. Carter:

Enclosed with this letter as "Exhibit A" is the original PAGA notice my office filed on behalf of Claimant VERONICA NOLAN with the LWDA on June 18, 2020. The original letter is incorporated herein by reference to include all facts, allegations and legal claims and to provide notice thereof to the LWDA and the related employer-entities. We further write to provide written notice specifically to the above-mentioned entities which are part of the joint employer and integrated enterprise of "BOB BAKER AUTO GROUP," as described in the original letter.

Included within BOB BAKER AUTO GROUP as subsidiaries and/or affiliates are BAKER AUTOS, INC. and BAKER CARLSBAD, INC. All other applicable but undiscovered entities remain and the LWDA should remain on notice of the Labor Code violations set forth herein.

Thank you for your attention to this matter and please contact me with any questions.

Sincerely,



Nicholas J. Ferraro, Esq.

Cc: Claimant VERONICA NOLAN

Exhibit A: Notice of Labor Code Violations under Labor Code sections 2698 *et seq.* (June 18, 2020)

EXHIBIT A

FERRARO

EMPLOYMENT LAW

NICHOLAS J. FERRARO
nick@ferraroemploymentlaw.com

June 18, 2020

NOTICE OF LABOR CODE VIOLATIONS LABOR CODE SECTIONS 2698 *et seq.*

PAGA NOTICE VIA ONLINE FILING

California Labor and Workforce Development Agency
<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

PAGA FILING FEE VIA U.S. MAIL

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, Tenth Floor
San Francisco, California 94102

PAGA NOTICE VIA EMAIL AND CERTIFIED U.S. MAIL (RETURN RECEIPT)

BOB BAKER AUTOMOTIVE, INC.
c/o Wade Poulson, Esq.
5531 Cancha de Golf, Suite 107
Rancho Santa Fe, CA 92091

BOB BAKER ENTERPRISES, INC.
c/o Wade Poulson, Esq.
5531 Cancha de Golf, Suite 107
Rancho Santa Fe, CA 92091

BOB BAKER VOLKSWAGEN
c/o Wade Poulson, Esq.
5531 Cancha de Golf, Suite 107
Rancho Santa Fe, CA 92091

Via Email: Bruce Carter, Director of H.R.
brucec@bobbakerautomotive.com

Dear Labor Enforcement Officer and Mr. Carter:

We write this letter on behalf of Claimant VERONICA NOLAN (“Claimant”) under Labor Code section 2699.3 regarding prior and ongoing violations of the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders committed by Defendant BOB BAKER AUTO GROUP, which is incorporated as BOB BAKER AUTOMOTIVE, INC., BOB BAKER ENTERPRISES, INC., BOB BAKER VOLKSWAGEN and other subsidiaries and affiliates (collectively referred to herein “Defendant”).

Claimant provides this letter as a prerequisite to filing a claim under the Private Attorneys General Act of 2004 (“PAGA”). If the Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations and violations within the statutorily-prescribed time period under

Labor Code section 2699.3, Claimant intends to seek and recover civil penalties on behalf of Claimant, the State of California, and all other aggrieved employees of Defendant under Labor Code section 2698, *et seq.* for all Labor Code violations committed by Defendant. *See e.g., Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.

FACTUAL STATEMENT

Claimant was employed by Defendant as a commissioned salesperson from about May 2017 through April 2020. She is the representative aggrieved employee in this action. The “aggrieved employees” include all non-exempt current and former employees of Defendant within the one-year period preceding the date of this notice through the present date, including those who were paid on a commission basis, by piece rate (or similar arrangement), as well as all employees paid on a traditional hourly basis. *See Huff v. Securitas* (2018) 23 Cal. App. 5th 745, 757 (“For PAGA standing a plaintiff need only have been employed by the violated and affected by ‘one or more’ of the alleged violations”); *see also* Labor Code section 2699, subds. (a), (c).

The defendants in this action includes the entities set forth above—BOB BAKER AUTOMOTIVE INC., BOB BAKER ENTERPRISES, INC., BOB BAKER VOLKSWAGEN—as well as other affiliated entity employers.¹ Defendant maintained common employment law policies, payroll, and practices under common administration and management. Together, these entities operate as BOB BAKER AUTO GROUP and are a joint employer and common integrated enterprise.

Violation of Labor Code § 226(a) –Wage Statement Violations

Labor Code section 226(a)(9) requires that an employer provide employees with itemized wage statements that show all applicable hourly rates and the corresponding number of hours worked at each rate. The wage statements issued by Defendant to Claimant and aggrieved employees did not list the correct number of hours worked or the correct hourly rates of pay for the earnings category marked “Rest&Rec . C” or “R&R” and similar designations. These wages were paid to Plaintiff and aggrieved employees under commission plans that pay employees at the minimum wage during non-productive (non-sales) time and for rest periods (*i.e.*, the rest period supplement). *See generally* Cal. Code Regs., tit. 8 § 1170, subd. 1; *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98, 105-118.

To illustrate, during the pay period of 03/01/2020 to 03/15/2020 (pay date of 03/20/2020), Claimant’s wage statements reflected the following earnings:

¹ These entities are referred to as a single Defendant throughout.

Earnings	rate	hours	this period	year to date
Regular		54.07		
Overtime		3.38		
Commission			2,367.25	26,144.95
Nonsalesac	13.0000	10.50	136.50	753.90
Pda Reimb			10.00	60.00
Rest&Rec.C	35.2125	.80	28.17	215.84
Holiday				500.00
Spiff Cash				430.99
Vacation				250.00
Gross Pay			\$2,541.92	28,355.68

Defendant violated Labor Code section 226(a)(9) because 0.80 hours is the incorrect number of hours worked during rest and recovery periods and because 35.2125 is the incorrect hourly rate. Defendant's written commission policies state that Claimant and other aggrieved employees will be paid at the minimum wage for rest period supplements characterized as "Rest&Rec . C" and earlier as "R&R." Defendant failed to accurately list the correct hours worked and the correct rate of pay on the wage statements, a fact that is obvious upon review of the salesperson overtime formulations documents and company policies created by Defendant which reflect Defendant's internal records of the hourly rate and rest and recovery hours.

Additionally, with respect to current and former employees who earned hourly compensation plus non-discretionary bonuses and commissions, Claimant alleges that those aggrieved employees were paid overtime at the incorrect hourly rate and therefore Defendant has separately violated Labor Code section 226(a)(1), (2), (5), and (9) with respect to those employees as the respective wage statements do not correctly itemize gross wages earned, total hours worked, net wages earned, or the applicable hourly rates in effect during the pay period.

Furthermore, in violation of Labor Code section 226(a)(2), Defendant did not correctly list the total hours worked each pay period on wage statements for Claimant and other aggrieved employees. Defendant does not list the total hours, and the hours listed for "regular" and "overtime," among other categories, do not match or total the hours recorded on the time punches (i.e., Time and Detail Attendance Reports) for Claimant or the aggrieved employees. Claimant alleges that this is because Defendant maintained a pattern, practice and uniform administration of corporate policy of adjusting and modifying time records and also failing to compensate employees for time worked "off the clock."²

As a result, Claimant and other aggrieved employees cannot promptly and easily determine from their wage statements alone the information required by Labor Code section 226(a). Reference to other documents is necessary to readily ascertain the correct hourly rates and hours worked. "Consistent with the PAGA statutory framework and the plain language of section 226(e), [the California Court of Appeals] hold[s] a plaintiff seeking civil penalties under PAGA for a violation of section 226(a)

² Additionally, in violation of Labor Code § 226(a)(1)-(9), in other pay periods where employees did not earn wages based on a commission or piece rate plan, Claimant alleges on information and belief that Defendant failed to accurately state the correct gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect and the corresponding number of hours. Claimant alleges that this was due to a miscalculation of the regular rate of pay for the purposes of paying overtime.

does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)” *Lopez v. Friant & Associates, LLC* (2017) 15 Cal. App. 5th 773, 787-88. Nevertheless, the wage statements as formatted present the possibility of not being paid all wages, create employee confusion, require difficulty and expense in reconstructing pay periods, and force employees to make mathematical calculations.

Finally, on information and belief, Claimant alleges that Defendant failed to list the proper name and address of the legal entity of the employer for certain aggrieved employees in violation of Labor Code § 226(a)(8).

Thus, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code sections 226.3 (\$250/\$1,000) and/or 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Violation of Labor Code § 2802 – Cell Phone Reimbursement Violations

Labor Code section 2802 requires that an employer reimburse employees for all necessary costs incurred in connection with the performance of their job. Defendant’s semi-monthly reimbursement to Claimant and other aggrieved sales employees of \$10 fails to accurately and adequately indemnify and reimburse employees for their use of their personal cell phones for work-related purposes.

Claimant and other aggrieved employees were required to use their personal cell phones for work-related purposes. Specifically, Claimant and other aggrieved employees used their personal cell phones to communicate with customers, were required to be responsive to the customers during waking hours, including on days where they were not scheduled to work, frequently texted customers, and accessed, received, and sent emails through their work-provided email accounts. Sales employees like Claimant were required to list their personal cell phone number on the Defendant-branded business card. Defendant’s reimbursement of \$10.00 semi-monthly (for a monthly total of \$20.00) is an insufficient reimbursement for the level of employees’ work-related use of personal cell phones and shifts the operating expenses of Defendant to its workforce.

Despite the foregoing facts, Defendant tacitly reveals that it understands the “Personal Mobile/PDA Device Supplement” of \$10.00 is grossly insufficient to reimburse employee expenses. The policy attempts to make it seem like it was an employee choice to use his or her personal cell phone for work-related use: “The Dealership does not require or recommend that you use your personal device, but acknowledges that sales associates may choose to do so as a matter of personal convenience.” Employees earned commissions for sales by using their personal phone and were required to list their personal number on the company business card. *See e.g., Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal. App. 4th 1137. Defendant also failed to reimburse other (non-sales) employees for a reasonable percentage of their cell phone bill when they required to use their personal cell phones for work-related purposes.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Violation of Labor Code §§ 226.7, 512, § 11 of the IWC Wage Orders – Meal Period Violations

Defendant violated Labor Code sections 226.7 and 512 and section 11 of the IWC Wage Orders, including Nos. 7 and 9, with respect to Claimant and other aggrieved employees by failing to consistently provide lawful meal periods or pay meal period premiums in lieu of providing such compliant meal periods.

Defendant failed to consistently provide timely, off-duty 30-minute meal periods to Claimant and other aggrieved employees within the first five hours of work, and timely second off-duty 30-minute meal periods to the extent they worked shifts of 10 hours or more, in violation of Labor Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. Although Defendant's meal period violations apply to all aggrieved employees, as an illustrative example, Claimant and other aggrieved sales employees were required to and did in fact work through meal periods as they were required and expected to sell to earn commissions. Claimant and other aggrieved employees were also expected and required by Defendant to refrain from leaving the premise for meal periods so that they could remain available for work. Any meal periods taken under these circumstances (*i.e.*, on-site) cannot be considered duty-free. Claimant and the aggrieved employees' meal periods were often late, short, interrupted, or missed entirely due to Defendant's policies and practices.

Defendant's policies, practices and management directives, on some occasions, required Claimant and other aggrieved employees to clock out for meal periods, regardless of whether meal periods were actually taken. Defendant would have managers "correct" and "adjust" hours worked to avoid the payment of meal period premiums and would often require employees to sign "Time Clock Correction Forms" to adjust hours worked in an effort to avoid the records showing evidence of meal period non-compliance. Defendant knew Claimant and other aggrieved employees performed work during meal periods but did not pay all required meal period premiums. Additionally, Claimant alleges that Defendant did not maintain a lawful first meal period waiver yet failed to pay premiums for missed meal periods in shifts of 6 hours or less.

When Defendant did not provide fully-compliant meal periods, Defendant failed to pay Claimant and other aggrieved employees a meal period premium in violation of Labor Code section 226.7. On information and belief, Claimant alleges that Defendant failed to abide by its own written policies regarding the payment of meal period premiums in such cases. Although Defendant did pay Claimant and other aggrieved employees *some* period premiums during their employment (the wage statements do not specify whether these were for meal or rest periods, or both), Claimant does not know why those premiums were paid, where other premiums were not for instances in which her meal period was missed or non-compliant. Regardless, Claimant experienced more non-compliant meal periods and was not paid all required premiums during her employment.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Violation of Labor Code §§ 226.7, 516, § 12 of the IWC Wage Orders – Rest Period Violations

Defendant violated Labor Code sections 226.7, 516 and section 12 of the IWC Wage Orders, including Nos. 7 and 9, with respect to Claimant and other aggrieved employees by failing to consistently provide lawful rest periods or pay rest period premiums in lieu of such compliant periods.

Defendant failed to authorize or permit ten-minute rest periods for every four hours of work or major fraction thereof as required by Labor Code sections 226.7, and 512 and section 12 of the IWC Wage Orders. Similar to Defendant's meal period violations, Claimant and other aggrieved employees routinely worked through rest periods as a result of customer and management demands, including the obligation to sell and earn commissions or perform services. They could not practically leave the worksite during breaks.

Claimant maintained a work phone that she used during work hours and would receive calls and texts during meal and rest periods for work-related purposes. Claimant claims that it was simply not a reality for employees to take consistent rest periods while working for Defendant and that this was commonly known. Claimant alleges that it was common and widespread, due to the nature of the business, for employees to miss rest periods entirely with the understanding that Defendant would not pay for such premiums. Defendant's own policies only permit rest periods for "every four hours worked," but do not state that employees are actually entitled to a rest period for every four hours worked, *or major fraction thereof*. Similar to meal periods, Claimant and the aggrieved employees were prohibited and/or discouraged from leaving the premises during a rest period, which means that employees were not relieved of all duties during their rest periods. *See Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269.

On those occasions Defendant did not provide a fully-compliant rest period, Defendant failed to pay Claimant and other aggrieved employees a rest period premium in violation of Labor Code section 226.7. On information and belief, Claimant alleges that Defendant failed to abide by its own written policies regarding the payment of meal period premiums in such cases.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Violation of Labor Code §§ 510 and 1194 - Overtime Regular Rate of Pay Violations

On information and belief, Claimant alleges that Defendant failed to pay aggrieved employees' overtime at the lawful regular rate of pay in violation of Labor Code sections 510 and 1198 and the related sections of the applicable IWC Wage Orders. The aggrieved employees, including the hourly plus commission/bonus segment of Defendant's workforce, were not paid at their lawful overtime rate (i.e., time and a half or double time based on their regular rate of pay) for all overtime hours worked in excess of 8 hours in a workday, 40 hours in a workweek, or for any hours on any seventh consecutive day of work, to the extent Claimant or other aggrieved worked on a seventh consecutive workday or other such hours as further investigation may reveal.

Defendant failed to pay Claimant and other aggrieved employees overtime based on the correct "regular rate of pay," because it failed to include all required forms of remuneration in the regular rate of pay for purposes of paying overtime each pay period. Therefore, Defendant failed to timely pay the full amount of overtime wages owed to the aggrieved employees.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Violation of Labor Code §§ 201 through 203 - Failure to Timely Pay Wages

Defendant violated Labor Code sections 201, 202 and 203 requiring timely payment of all wages upon separation and waiting time penalties in lieu thereof with respect to Claimant and other aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Because Defendant failed to pay all wages and premiums owed to Claimant and other aggrieved employees during their employment, Defendant failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203. Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days.

As explained above, Defendant routinely underpaid Claimant and other aggrieved employees or otherwise failed to pay at the lawful rate for all hours worked, and premiums owed, each relevant pay period. Therefore, Claimant and other aggrieved employees were not paid all wages owed on their final day of employment or within 72 hours thereafter. Waiting time penalties have not been paid to Claimant or, on information and belief, other aggrieved employees.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Violation of the Labor Code— Failure to Pay for All Hours Worked (incl. Minimum Wage)

Defendants failed to pay Claimant and other aggrieved employees for all hours worked at the lawful minimum, regular and overtime rates in accordance with Labor Code sections 204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1 and the IWC Wage Orders, including but not limited to Wage Order Nos. 7 and 9, and local minimum wage ordinances.

Defendant's employees worked off-the-clock outside of their scheduled hours and during meal periods without compensation. The aggrieved employees in various positions, including sales, finance, and service, among others, routinely worked throughout their shift without receiving a lawful meal period. However, meal periods were nevertheless recorded or retroactively "corrected" so that the time records portray the meal period as taken. The result of this policy and practice is that employees are deprived of pay for hours worked during time that is rendered uncompensated due to the illusory recording of certain meal periods, which are unpaid and not included in daily hours worked for purposes of wage payment.

Additionally, sales employees and other aggrieved employees maintained access to work-related emails and answered and responded to work-related telephone calls outside of scheduled working hours. For employees paid on a commission or piece rate basis, they were not compensated at the lawful minimum wage for these hours worked when their commission dropped below the threshold necessary for payment on a commission or piece rate basis to apply. For employees paid on an hourly basis who were similarly incentivized and who maintained access to their work email address on their

personal cellular devices, these aggrieved employees also worked off-the-clock hours and were not paid for this time, in violation of the Labor Code sections listed above.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) and Labor Code § 1197.1 (\$100/\$250) per violation per pay period per employee, along with all other civil penalties permitted by law.

Violation of Labor Code § 1174 - Failure to Maintain Accurate Payroll Records

Because of the violations set forth in this notice, including Defendant's failure to accurately maintain records of all hours worked at the appropriate lawful rates of pay, Defendant violated Labor Code section 1174 and the IWC Wage Orders, including section 7 of Wage Order Nos. 7 and 9, by failing to maintain accurate payroll records showing daily hours worked and the wages paid to each employee.

As a result, Defendant is liable for a civil penalty of \$500 per employee to Claimant and each aggrieved employee pursuant to Labor Code section 1174.5.

Attorneys' Fees and Costs

Claimant was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendant. Claimant has thereby incurred attorneys' fees and costs, which she is entitled to receive on all causes of action under Labor Code section 2699(g).

CONCLUSION

Claimant informs the LWDA of the violations set forth herein so that the LWDA may initiate enforcement. If in the most likely case that the LWDA does not pursue enforcement, Claimant will pursue representative claims on behalf of the State of California and the aggrieved employees and will seek all remedies available for violations of the Labor Code and the IWC Wage Orders permitted under the PAGA.

Thank you for your attention to this matter and please contact me with any questions.

Sincerely,



Nicholas J. Ferraro, Esq.

Cc Claimant VERONICA NOLAN