

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

7 Attorneys for Plaintiff
8 AGUSTIN MERINO

9 **SUPERIOR COURT OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF ORANGE**

11
12 AGUSTIN MERINO, as an individual and
13 on behalf of all others similarly aggrieved

14 Plaintiff,

15 vs.

16
17 STERLING MOTORS, LTD. dba STERLING
18 BMW OF NEWPORT BEACH, a California
Corporation; WAYNE MORRIS MINOR, an
19 individual, and DOES 1 to 100, inclusive,

20 Defendants.
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CASE NO. 30-2020-01175391-CU-OE-CXC

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

JURY TRIAL DEMANDED

Assigned for All Purposes
Judge William Cluster

CX-104

1 Plaintiff AGUSTIN MERINO, an individual on behalf of himself and all other aggrieved
2 employees similarly situated (“Aggrieved Employee(s)”), hereby files this Complaint against
3 Defendants STERLING MOTORS, LTD. dba STERLING BMW OF NEWPORT BEACH
4 (“STERLING”), a California Corporation, Defendant WAYNE MORRIS MINOR, an individual,
5 and DOES 1 to 100, inclusive (collectively referred to herein as “Defendants”). Plaintiff alleges
6 as follows:

7 **THE PARTIES**

8 1. Plaintiff AGUSTIN MERINO is, and at relevant times was, an individual domiciled in the
9 State of California and a citizen of the State of California who worked as a non-exempt car
10 washer for Defendants in the State of California.

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

14 3. On information and belief, WAYNE MORRIS MINOR is an individual residing in the
15 State of California and is, and at all relevant times has been, the Chief Executive Officer of
16 STERLING. On information and belief, WAYNE MORRIS MINOR devised and implemented
17 the policies at issue in this complaint and “caused” these violations as that term is used in Labor
18 Code §§ 558 and 1197.1. Pursuant to Labor Code §§558 and 1197.1, WAYNE MORRIS MINOR
19 is liable as a person who “caused” the violations to occur.

20 4. The true names and capacities of the DOE Defendants sued herein as DOES 1 through
21 100, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendants by
22 said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible
23 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to
24 reflect the true names and capacities of the Doe Defendants when such identities become known.

25 5. Plaintiff is further informed and believes that, at all relevant times, each Defendant
26 was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling
27 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
28 interest of some or all of the other Defendants, and was engaged with some or all of the other

1 defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
2 other Defendants so as to be liable for their conduct with respect to the matters alleged in this
3 complaint. Plaintiff is further informed and believes and thereon alleges that each Defendants
4 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
5 times, each Defendants knew or should have known about, authorized, ratified, adopted,
6 approved, controlled, aided and abetted the conduct of all other Defendants.

7 6. At all relevant times, Defendants were and are legally responsible for all of the unlawful
8 conduct, policies, practices, acts and omissions complained of herein. Further, Defendants are
9 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
10 respondent superior. The conduct of Defendants' managers and supervisors was at all relevant
11 times undertaken as employees of Defendants, acting within the scope of their employment or
12 authority in all of the unlawful activities described herein.

13 7. Whenever and wherever reference is made in this complaint to any act or failure to act by
14 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the
15 acts and/or failures to act by each Defendant acting individually, jointly and severally.

16 **JURISDICTION AND VENUE**

17 8. This court possesses original subject matter jurisdiction over this matter. Venue is proper
18 in Orange County, California, because Defendants do business in Orange County, California, and
19 some of the complained of conduct occurred in this judicial district.

20 **FACTUAL ALLEGATIONS**

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

26 10. Plaintiff began working for Defendants as a car washer, in or about January 2016, and
27 continued working in that capacity until he was terminated, on March 20, 2020. During his
28 employment, Plaintiff was classified as a non-exempt employee. He was paid on an hourly basis

1 and compensated as well with non-discretionary remuneration, including but not limited to, “Spiff
2 Bonuses”. Plaintiff typically worked more than eight (8) hours in a day and or more than forty
3 hours in a week. He was compensated by Defendants bi-weekly, as set forth in his wage
4 statements.

5 11. Plaintiff and other Aggrieved Employees did not receive timely, compliant thirty-minute
6 meal periods. Plaintiff and other Aggrieved Employees were forced to take late first meal periods
7 and/or work through their first meal periods or said meal periods would be interrupted/cut short
8 due to the nature and constraints of their job duties, commentary from supervisors, among other
9 reasons. Moreover, Plaintiff and other Aggrieved Employees did not receive second meal periods
10 when working shifts consisting of more than ten (10) hours. Defendants did not pay a meal
11 period premium for each missed/improper meal period, and on the rare occasion Defendants did
12 pay a meal period premium, Defendants did not pay the correct premium due to Defendants’
13 failure to incorporate all non-discretionary forms of remuneration into the regular rate of pay for
14 purposes of calculating the owed meal period premium.

15 12. Defendants also failed to maintain accurate and complete time keeping records of Plaintiff
16 and other Aggrieved Employees’ meal periods, including start and stop times.

17 13. Upon information and belief, Defendants at times implemented a policy and practice of
18 automatically deducting thirty minutes for Plaintiff and other Aggrieved Employees’ meal
19 periods, despite having actual and/or constructive knowledge of that Plaintiff and other Aggrieved
20 Employees did not receive timely, off duty, and uninterrupted meal periods, resulting in
21 underpayment to Plaintiff and other Aggrieved Employees of minimum wages and overtime pay.

22 14. Plaintiff and other Aggrieved Employees did not receive compliant, timely 10 (ten)-
23 minute rest periods every four hours or major fraction thereof. Plaintiff and the other Aggrieved
24 Employees, at times, were required to take late rest periods and/or work through their rest
25 periods, or any purported rest periods would be interrupted/cut short due to the nature and
26 constraints of their job duties, commentary from supervisors, among other reasons. Furthermore,
27 Defendants prohibited Plaintiff and other Aggrieved Employees from leaving the work premises
28 during any purported rest periods. This is illegal as employers cannot require employees to stay

1 on the work premises during their rest periods as “one cannot square the practice of compelling
2 employees to remain at the ready, tethered by time and policy to *particular locations* or
3 communications devices, with the requirement to relieve employees of all work duties and
4 employer control during 10-minute rest periods. [emphasis added].” *Augustus v. ABM Security*
5 *Services, Inc.*, (2016) 5 Cal.5th 257, 269.

6 15. Defendants never once compensated Plaintiff a one-hour premiums for any missed, late,
7 interrupted, or otherwise non-compliant rest periods. Upon information and belief, this policy of
8 failing to pay rest period premiums for denied rest periods was applied uniformly to all Aggrieved
9 Employees.

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

26 17. During the relevant time period, Defendants failed to furnish accurate wage statements in
27 compliance with Labor Code section 226. Among other things, Plaintiff and other Aggrieved
28 Employees’ paystubs did not include: (1) the correct total hours that Plaintiff and other Aggrieved

1 employees worked during each pay period; (2) the correct total gross and net wages; and (3) all
2 meal and rest period premiums owed at the proper rate.

3 18. Defendants failed to pay Plaintiff for all hours worked during employment and upon the
4 separation of employment by, including but not limited to, failing to pay Plaintiff for all hours
5 worked as a result of its thirty-minute automatic deduction for meal periods.

6 19. Plaintiff is informed and believes that Defendants engaged in these same unlawful
7 practices with regard to all of the other Aggrieved Employees.

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

13 21. During the period beginning one-year period preceding the filing of the required PAGA
14 notice with the Labor Workforce and Development Agency, and continuing through the present, as
15 alleged herein, Defendants violated Labor Code sections 201, 202, 203, 204, 210, 216, 218.5,
16 225.5, 226, 226.3, 226.7, 233. 234, 245, 246, 247, 247.5, 248, 248.5, 510, 512, 558, 558.1,
17 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699, 2810.5 and all relevant
18 sections of the applicable Wage Orders as to Plaintiff and all other Aggrieved Employees
19 employed by Defendants who worked as “security” or a similarly situated position/job
20 classification however titled. These violations subject Defendants to civil penalties as set forth
21 in the foregoing statutes as well as other provisions of the Labor Code, including without
22 limitation Labor Code sections 203, 256, 210, 1174.5, 1197.1 and 2699.

23 **THE “AGGRIEVED EMPLOYEES”**

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

FIRST CAUSE OF ACTION

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

23. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

24. California law provides employees in California must be paid for all hours worked, up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage. As alleged herein, Plaintiff and the other Aggrieved Employees regularly worked hours for which they were not compensated by Defendants as required by California law. Defendants unlawfully maintained a policy and practice of automatically deducting thirty minutes for meal periods purportedly provided to Plaintiff and other Aggrieved Employees, notwithstanding actual and/or constructive knowledge that they did not receive compliant meal periods for these shifts. Defendants owes Plaintiff and other Aggrieved Employees at least minimum wage for this time spent working during meal periods, resulting in unpaid wages.

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

26. California law provides employees in California must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day, and must be paid double wages for all hours worked in excess of 12 per day, unless they are exempt. As alleged herein, Plaintiff and the other Aggrieved Employees worked overtime hours for which they were not compensated by Defendants as required by California law. The overtime pay did not incorporate all forms of non-discretionary remuneration thus denying Plaintiff and other Aggrieved Employees of significant overtime wages. Moreover, as a result of what was essentially an auto-deduction for meal periods not provided, Plaintiff and other Aggrieved

1 Employees were denied further overtime wages. Defendants owe Plaintiff and other Aggrieved
2 Employees overtime wages for this work where the addition of such hours would require payment
3 at an overtime rate.

4 27. Defendants' violations with respect to minimum wages and/or overtime wages, as alleged
5 herein, result in separate violations of Labor Code sections 1198 and 1199, and subject
6 Defendants to civil penalties under the Labor Code, including without limitation Labor Code
7 sections 1197.1 and 2699. Each violation of each Labor Code section and Wage Order provision,
8 for each aggrieved employee, results in a separate civil penalty.

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

22 29. Plaintiff and other Aggrieved Employees regularly worked shifts consisting of more
23 than five (5) hours without being provided a thirty-minute, timely, uninterrupted, duty-free meal
24 period. They were unable to avail themselves of such breaks for various reasons, including, the
25 pressures from their workloads and the lack of relief workers available, commentary and pressure
26 from superiors to take no breaks at all. Per Defendants' illegal meal period policy/practice,
27 Plaintiff and other Aggrieved Employees were not always relieved of their duties during meal
28 periods. Upon information and belief, Plaintiff and the other Aggrieved Employees did not

1 receive any second meal periods for shifts during which they worked more than ten hours. Upon
2 information and belief, Defendants failed to maintain a company meal period policy compliant
3 with California law and failed to maintain first or second meal period waiver agreements
4 compliant with California law. Defendants also failed to pay Plaintiff and other Aggrieved
5 Employees an additional hour of wages at their proper regular rates of pay for each workday a
6 meal period was not provided.

7 30. Defendants failed to provide Plaintiff and the other Aggrieved Employees with
8 all required meal periods, or with compensation in lieu thereof. In failing to provide all required
9 and fully compliant meal periods and/or failing to compensate for missed/non-compliant meal
10 periods at the correct regular rate of compensation, Defendants violated Labor Code sections
11 226.7, 512, and 1198-1199, and Wage Order 5-2001 (and all applicable wage orders), sections
12 11(A) and (C). These violations subject Defendants to civil penalties under Labor Code section
13 2699, and Wage Order 5-2001 (and all applicable wage orders), section 20. Each violation of
14 each Labor Code section and Wage Order provision, for each aggrieved employee, results in a
15 separate civil penalty.

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

23 32. Defendants employed policies and procedures that ensured Plaintiff and other Aggrieved
24 Employees would not receive all legally required rest periods, as Defendants did not authorize nor
25 permit all required rest periods in strict accordance to, and in compliance with, the timing
26 requirements of all applicable Wage Orders. Defendants similarly employed policies and
27 procedures that rendered rest periods non-compliant with the requirements of California law by,
28 inter alia, failing to relieve Plaintiff and other Aggrieved Employees of all duties and all employer

1 control. Similar to meal breaks, Plaintiff and the other Aggrieved Employees were not always
2 able to avail themselves of their rest breaks for various reasons, including, the pressures from
3 their workloads and the lack of relief workers available, and commentary from supervisors. Per
4 Defendants' illegal rest period policy/practice, Plaintiff and other Aggrieved Employees were not
5 always relieved of their duties and were never permitted to leave the premises for purposes of
6 taking rest periods. Notably, Plaintiff and other Aggrieved Employees were never afforded any
7 version of a third rest period when working shifts of more than ten (10) hours. The requirement
8 of any third rest period was never acknowledged by Defendants. Defendants further employed
9 policies and procedures ensuring Plaintiff and other Aggrieved Employees did not receive
10 premium wages to compensate them for workdays they did not receive all legally required and
11 fully compliant rest periods.

12 33. In failing to provide all required and fully compliant rest breaks and/or failing to
13 compensate for missed/non-compliant rest breaks at the correct regular rate of compensation,
14 Defendants have violated Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 5-
15 2001 (and all applicable wage orders), section 12(A). These violations subject Defendants to civil
16 penalties under Labor Code section 2699, and Wage Order 5-2001 (and all applicable wage
17 orders), section 20. Each violation of each Labor Code section and Wage Order provision, for
18 each aggrieved employee, results in a separate civil penalty.

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

27 35. Labor Code section 226(e) provides that "[a]n employee suffering injury as a result of a
28 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to

1 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
2 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
3 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to
4 an award of costs and reasonable attorney's fees.

5 36. Labor Code section 226.3 provides that "[a]ny employer who violates subdivision (a) of
6 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
7 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
8 for each violation in a subsequent citation, for which the employer fails to provide the employee a
9 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226."

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

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

25 38. Labor Code section 204 requires that all earned wages must be paid to employees twice
26 during each calendar month. Defendants violated this section by failing to pay Plaintiff and other
27 Aggrieved Employees an additional hour of pay for meal and rest periods not provided/valid, by
28 failing to compensate employees for all hours worked, including overtime hours worked, and by

1 failing to pay proper premium wage rates for all hours worked. These violations subject
2 Defendants to civil penalties under Labor Code section 210. Each violation results in a separate
3 civil penalty, for each aggrieved employee for each pay period during which the statute
4 provisions were violated.

5 39. Defendants failed to pay Plaintiff and the other Aggrieved Employees all wages that were
6 due and owing during their employment; and, failed to Plaintiff and the other Aggrieved
7 Employees who are former employees all wages that were due and owing upon termination or
8 resignation. Among other things, Plaintiff and the other Aggrieved Employees were not paid for
9 the off the clock work resulting from, inter alia, from Defendants' meal break auto-deduction, as
10 described herein.

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

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

28 42. California Labor Code section 223 makes it unlawful for an employer to secretly pay

1 wages lower than required by statute while purporting to pay legal wages. As described above,
2 Defendants willfully and systematically denied Plaintiff and other Aggrieved Employees
3 minimum wage compensation for all hours worked which resulted in the payment of less than
4 statutorily required wages to them. Defendants acted with the intent to deprive them of statutory
5 wages, including, but not limited to, overtime wages and minimum wages, to which they were
6 entitled to under California law.

7 43. Thus, Defendants paid Plaintiff and other Aggrieved Employees lower wages than those
8 they were entitled to while purporting that Plaintiff and other Aggrieved Employees were
9 properly paid. California law requires employers to keep “accurate and complete” payroll records
10 showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage
11 Order 5-2001, section 7, similarly requires to keep time records showing, inter alia, when the
12 employees begin and end each work period.

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

21 45. Together, Labor Code sections 1198 and 1199 make unlawful employment of any
22 individual under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or
23 neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
24 sections 1174, 1197, and 1198, or other order or ruling of the IWC. Defendants’ violations with
25 respect to meal periods, rest periods, recordkeeping provisions, and minimum wages and/or
26 overtime wages, as alleged herein, result in separate violations of Labor Code sections 1198 and
27 1199, and subject Defendants to civil penalties under the Labor Code, including without
28 limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor Code section and

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

2 46. Defendants failed to provide paid sick leave to Plaintiff and other Aggrieved Employees,
3 further failing to put them on notice of their paid sick leave rights—or thereby putting their
4 entitlement to sick leave in a Labor Code Section 2810.5 notice. In addition, Defendants failed to
5 maintain accurate records of used sick leave and the balance of paid sick leave left to the
6 employee throughout the relevant time period. Notably, where an employer compensates an
7 employee with non-discretionary bonus pay (as Defendants did here), any sick leave/sick pay
8 calculation must incorporate the value of the non-discretionary bonuses; upon information and
9 belief, Defendants' sick leave/sick pay calculation did not. Additionally, Defendants failed to
10 provide notice of the correct sick leave amount balance left for Plaintiff and the other Aggrieved
11 Employees, and thus affecting their intelligent exercise of their paid sick leave. But for this
12 failure, Plaintiff and the other Aggrieved Employees would have used their paid sick leave at
13 least prior to their respective separation, for as on several occasions thereafter, he or she would
14 have been entitled to use the banked sick leave and earn appropriate compensation. This illegal
15 retention of paid sick leave is unlawful and Plaintiff seeks all forms of injunctive relief,
16 restitution, and declaratory relief as permitted by California law, on behalf of himself and all
17 aggrieved employees.

18 47. An Employer is required to provide paid sick days in accordance to Labor Code Section
19 245 through 248.5. Defendants failed to maintain accurate records documenting the hours worked
20 and paid sick days accrued and used by employees in violation of Labor Code Section 247.5,
21 permitting the presumption that Plaintiff was entitled to the maximum number of hours accruable
22 under this article at the time of her termination. Moreover, by not incorporating the additional
23 rates of pay/non-discretionary remunerations, including but not limited to additional rates of
24 pay/shift differentials and bonuses/incentive pays, into the sick leave rates of pay, Defendants
25 unlawfully retained and continue to retain paid sick leave that should have been paid and wasn't.
26 On information and belief, Plaintiff alleges that all of these practices were experienced and
27 continue to be experienced the other Aggrieved Employees. Plaintiff requests all appropriate
28 relief under the PAGA and these statutes, including but not limited to the restitution of earned

1 paid sick leave pay that was not paid to Aggrieved Employees due to Defendants' sole failure to
2 incorporate all non-discretionary renumerations/rates of pay into the regular rate for calculating
3 sick leave pay benefits as required by California law.

4 48. Accordingly, Defendants has violated Labor Code sections 233 and 234 as to Plaintiff and
5 other Aggrieved Employees. These violations subject Defendants to civil penalties under the
6 Labor Code, including without limitation Labor Code Section 233 and 234 and 2699. Each
7 violation of each Labor Code section and Wage Order provision, for each aggrieved employee,
8 results in a separate civil penalty.

9 49. Under the provisions of PAGA and Labor Code sections 201, 202, 203, 204, 210, 216,
10 218.5, 225.5, 226, 226.3, 226.7, 233, 234, 245, 246, 247, 247.5, 248, 248.5, 510, 512, 558, 558.1,
11 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699, 2810.5 and all applicable Wage
12 Orders, as well as all interpretations of these laws by California Courts and administrative bodies,
13 as well as any other law that is enforceable through PAGA, Defendants are liable for all
14 statutorily-specified penalties recoverable under PAGA as enumerated in the relevant California
15 Labor Code provisions listed herein, or for default PAGA penalties under Labor Code Section
16 2699(f) for any violation of a Labor Code section without a specified civil penalty.

17 50. Plaintiff complied with the procedures for bringing suit specified in Labor Code sections
18 2699.3 and 2699.5. Plaintiff gave written notice to the California Labor and Workforce
19 Development Agency ("LWDA") via electronic mail at PAGAfilings@dir.ca.gov and to
20 Defendants via certified mail 65 days prior to this Complaint of the specific provisions of the
21 Labor Code and Wage Orders allegedly violated, including the facts and theories to support the
22 alleged violations.

23 51. Under Labor Code section 2699.3, the LWDA must give written notice by certified mail
24 to the parties it intends to investigate the alleged violations within 65 days of the date of
25 Plaintiff's written notice. As of the expiration of the statutory exhaustion period, the LWDA has
26 not provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of the
27 State of California and other Aggrieved Employees. As of the filing of this Complaint,
28 Defendants have not responded to Plaintiff's PAGA notice in an attempt to cure. Accordingly,

1 Plaintiff has exhausted all administrative remedies required by law.

2 52. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, Plaintiff
3 is entitled to recover civil penalties, costs, plus reasonable attorney's fees and costs, all in an
4 amount to be proved.

5 **PRAYER**

6 WHEREFORE, Plaintiff prays for judgment against each Defendants, jointly and
7 severally, as follows:

- 8 1. For civil penalties according to proof;
9 2 For reasonable attorney's fees and costs of suit; and
10 3. For such other and further relief as the Court deems just and proper.

11 Dated: December 18, 2020

CROSNER LEGAL, P.C.

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14 Michael R. Crosner
15 Zachary M. Crosner
16 Blake R. Jones
Attorneys for Plaintiff AGUSTIN MERINO

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff AGUSTIN MERINO demands a trial by jury on all claims so triable.
19

20 Dated: December 18, 2020

CROSNER LEGAL, P.C.

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24 Michael Crosner
25 Blake Jones
26 Zachary Crosner
27 Attorneys for Plaintiff AGUSTIN MERINO
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