

David Mara, Esq. (SBN 230498)
Tony Roberts, Esq. (SBN 315595)
MARA LAW FIRM, PC
2650 Camino del Rio North, Suite 205
San Diego, CA 92108
Telephone: 619.234.2833
Facsimile: 619.234.4048

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Superior Court of California
County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk of Court

Attorneys for Plaintiff HIEN PHAN,
on behalf of himself and all others similarly situated
and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

HIEN PHAN, on behalf of himself and
all others similarly situated, and on
behalf of the general public,

Plaintiff,

v.

**B&W AUTOMOTIVE, INC., and
DOES 1-100,**

Defendants.

Case No.

21STCV03790

PLAINTIFF HIEN PHAN'S PAGA COMPLAINT

1. Violation of the Private Attorney General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code § 2698, et. seq.)
2. Violation of the PAGA for Failure to Pay All Overtime and Doubletime Wages (Cal. Lab. Code § 2698, et. seq.)
3. Violation of the PAGA for Failure to Provide Meal Periods (Cal. Lab. Code § 2698, et. seq.)
4. Violation of the PAGA for Failure to Provide Rest Periods (Cal. Lab. Code § 2698, et. seq.)
5. Violation of the PAGA for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code § 2698, et. seq.)
6. Violation of the PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements (Cal. Lab. Code § 2698, et. seq.)
7. Violation of the PAGA for Failure to Pay Employees Two Times Per Month (Cal. Lab. Code § 2698, et. seq.)
8. Violation of the PAGA for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (Cal. Lab. Code § 2698, et. seq.); and,
9. Violation of the PAGA for Failure to Reimburse Expenses in Discharging Duties (Cal. Lab. Code § 2698, et. seq.).

By Fax

DEMAND FOR JURY TRIAL

1 Plaintiff HIEN PHAN (“Plaintiff”), on behalf of himself and all others similarly aggrieved
2 employees (“aggrieved employees”), files this Complaint against Defendant B&W Automotive, Inc.
3 including, but not limited to, any related entity, any parent, subsidiary or affiliate thereof or any
4 successor in interest of any of the foregoing (collectively “Defendant”) and/or DOES 1-100.

5 **I. INTRODUCTION**

6 1. This is a representative action seeking recovery of penalties under the California Labor Code
7 Private Attorney General Act of 2004 (PAGA), California Labor Code § 2698 *et. seq.*, against
8 Defendant and/or DOES 1-100. The PAGA permits an “aggrieved employee” to bring a
9 lawsuit on behalf of himself and other current and former employees to address an employer’s
10 violations of the California Labor Code.

11 2. This action is brought on behalf of Plaintiff and all other aggrieved employees of Defendant
12 and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period;
13 worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest
14 break; worked qualifying shifts without receiving second meal periods and second and third
15 rest breaks; were not provided accurate itemized wage statements; were not paid all wages
16 owed twice per month; were not provided paid sick leave, were not paid compensation for all
17 time worked at the straight, overtime, or double time rate; were not provided reimbursements
18 for business expenditures; and, were not paid waiting time penalties. Plaintiff seeks penalties
19 on behalf of himself and all other aggrieved employees of Defendant and/or DOES as provided
20 herein. This Complaint also seeks attorneys’ fees and costs under the PAGA, Cal. Lab. Code
21 § 2699(g)(1).

22 3. At all times mentioned herein, Plaintiff and the other aggrieved employees were not classified
23 as “Exempt” or primarily employed in an executive, professional, or administrative capacity.
24 Thus, under California law, Plaintiff and the aggrieved employees should be: provided meal
25 periods; authorized and permitted to take rest periods; paid one hour of premium pay for all
26 unprovided meal periods; paid one hour of premium pay for all rest periods that were not
27 authorized and/or permitted; paid penalties for not being provided itemized wage statements;
28 paid penalties for not being provided paid sick leave; paid compensation for all time worked

at the regular, overtime or double time rate; paid all wages owed twice per month; reimbursed business expenses; and, paid penalties for not being paid timely at the time of termination.

4. At all times mentioned herein, Defendant and/or DOES controlled the working conditions of Plaintiff and the aggrieved employees including, but not limited to, having the authority to hire and fire Plaintiff and the other aggrieved employees, setting the wages of Plaintiff and the other aggrieved employees, and instructing Plaintiff and the other aggrieved employees when and/or where to work. In addition, Defendant and/or DOES developed, wrote, dictated, approved and/or authorized wage and hour policies and/or practices that Plaintiff and the aggrieved employees labored under. These policies and/or practices included, but were not limited to, policies and/or practices regarding meal periods, straight time, overtime, double time, rest periods, wage statements, paid sick leave, paying compensation at time of termination, reimbursing business expenses; and timing of payment. Further, Defendant and/or DOES had the ability to prevent Plaintiff and the other aggrieved employees from working.

II. JURISDICTION AND VENUE

5. Plaintiff HIEN PHAN is an individual residing in California. Plaintiff was employed by Defendant and/or DOES in California. Plaintiff, and each of the aggrieved employees, were employees of Defendant and/or DOES, and/or its operating divisions and subsidiaries, within the State of California. Plaintiff and each of the aggrieved employees were subject to the unlawful policies beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor and Workforce Development Agency (LWDA).
6. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant and/or DOE operates facilities, employs hourly employees, conducts business, and commits *California Labor Code* violations within Los Angeles County and California. Each Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees situated within the State of California which has included within Los Angeles County. Defendant and/or DOES employ numerous aggrieved employees in California and/or Los Angeles County.

1 7. Plaintiff brings this action on behalf of himself and the other aggrieved employees of and/or
2 DOES pursuant to the PAGA. Plaintiff, as a personal representative of the general public, will
3 and does seek to recover any and all penalties for each and every violation shown to exist or
4 to have occurred during the one (1) year period before Plaintiff filed Notice with the LWDA
5 of his intent to bring this action, in an amount according to proof, as to those penalties that are
6 otherwise only available to public agency enforcement actions. Funds recovered will be
7 distributed in accordance with the PAGA, with at least seventy-five (75) percent of the
8 penalties recovered being reimbursed to the State of California and the LWDA.

9 8. There is no federal question at issue as the issues herein are based solely upon California
10 statutes and law, including the *California Labor Code*, *IWC Wage Orders*, *Code of Civil*
11 *Procedure*, and *Civil Code*.

12 9. The California Superior Court also has jurisdiction in this matter because the penalties sought
13 exceed the minimum jurisdictional limits of the Superior Court and will be established at trial,
14 according to proof. Defendant and/or DOES either own, maintain offices, transact business,
15 have an agent or agents, have their principal place of business in, and/or otherwise are found
16 within the County of Los Angeles, California.

17 **III. THE PARTIES**

18 **A. Plaintiff**

19 10. Plaintiff HIEN PHAN, a former employee of Defendant and/or DOES, and similar aggrieved
20 employees were and are entitled to statutory meal periods, statutory rest periods, accurate
21 itemized wage statements, payment of wages owed twice a month, paid sick leave,
22 compensation for all time worked at the regular, overtime, and doubletime rate, and to be paid
23 timely pursuant to California law and/or to receive timely wages at the time of termination
24 from Defendant and/or DOES.

25 11. Plaintiff and similar aggrieved employees were and are employed in the State of California by
26 the Defendant and/or DOES as non-exempt automotive technicians, mechanics, or similar job
27 designations and titles in California. Plaintiff was employed in a non-exempt capacity.

28 12. These claims are for Plaintiff and all non-exempt automotive technicians, mechanics, or similar

1 job designations, and all similarly situated non-exempt aggrieved employees of Defendant
2 and/or Does within the State of California.

- 3 13. A notice correspondence showing compliance with Cal. Lab. Code § 2699.3 was sent to the
4 LWDA and Defendant on September 16, 2020. This notice demonstrates that Plaintiff is an
5 aggrieved employee and has standing to bring a representative action on behalf of the LWDA
6 and as a private attorney general. No notice of cure by Defendant and/or DOES was provided
7 and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-
8 five (65) day period since the mailing of the notice of the action. Accordingly, Plaintiff files
9 this action as a “Representative Action” as authorized by Cal. Lab. Code § 2699.3(a)(2)(C).

10 **B. Defendant**

- 11 14. Defendant and/or DOES are engaged in the ownership and operation of industrial work sites
12 located within Los Angeles County and throughout California. Defendant runs vehicle
13 dealerships, including service departments within Los Angeles County and throughout
14 California.

- 15 15. Defendant’s and/or DOES’ principal place of business was/is in the State of California.

- 16 16. Defendant and/or DOES have numerous offices and/or contracts in the State of California.

- 17 17. California is the nerve center of Defendant’s and/or DOES’ operations.

- 18 18. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in
19 the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on
20 information and belief alleges that said Defendants are now, and/or at all times mentioned in
21 this Complaint were doing business in the State of California and/or throughout the United
22 States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is
23 legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this
24 Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

- 25 19. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects
26 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
27 plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
28 attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized

the acts of each of the remaining Defendants.

20. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners, agents, owners, shareholders, subsidiaries, affiliated companies, and/or predecessors of Defendant and/or DOES and were acting on behalf of Defendant and/or DOES at all times.

IV. GENERAL ALLEGATIONS

21. During all, or a portion, of the one (1) year period before Plaintiff filed Notice of his claims with the LWDA, Plaintiff and each of the aggrieved employees were employed by Defendant and/or DOES in the State of California. Plaintiff and the other aggrieved employees are composed of all persons who performed services at Defendant's dealerships, stores, facilities, and centers in the State of California as non-exempt automotive technicians, mechanics, or similar job designations, and all similarly situated non-exempt aggrieved employees of Defendant and/or its subsidiaries or affiliated companies and/or predecessors and/or DOES within the State of California.
22. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the aggrieved employees were entitled to be provided legally compliant meal periods in a timely manner or payment of one hour of pay as additional compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.
23. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift of at least five (5) hours worked per day by Plaintiff and all aggrieved employees, and by failing to provide compensation for these unprovided meal periods, Defendant and/or DOES willfully violated the provisions of Cal. Lab. Code § 226.7, IWC Wage Order No. 4-2001, and California Code of Regulations, Section 11040(11). In addition, Defendant and/or DOES failed to provide Plaintiff and the other aggrieved employees another duty-free meal period of not less than thirty (30) minutes for every shift of more than ten (10) hours per day.
24. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the aggrieved employees were entitled to be authorized and/or permitted to take legally compliant rest periods in a timely manner or payment of one hour of pay as additional

1 compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they were
2 not authorized and/or permitted to take a legally compliant rest period.

3 25. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction
4 thereof, worked per day by Plaintiff and all aggrieved employees and by failing to provide
5 compensation for these periods, Defendant and/or DOES willfully violated the provisions of
6 *Cal. Lab. Code § 226.7*, IWC Wage Order No. 4-2001, and California Code of Regulations,
7 Section 11040(12).

8 26. At all times mentioned herein, Defendant and/or DOES failed to pay all wages owed to Plaintiff
9 and to other terminated or resigned members of the aggrieved employees and failed to timely
10 pay wages during employment.

11 27. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the aggrieved
12 employees all wages earned twice per month.

13 28. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
14 Plaintiff and the aggrieved employees were entitled to receive complete and accurate pay
15 statements in accordance with California law.

16 29. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
17 they were not providing complete and accurate pay statements in accordance with California
18 law to Plaintiff and the aggrieved employees.

19 30. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
20 they failed to adopt a sick pay policy for Plaintiff and the aggrieved employees that is compliant
21 with California law.

22 31. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
23 Plaintiff and the aggrieved employees were entitled to receive pay statements itemizing the
24 amount of accrued/available sick leave for Plaintiff and the aggrieved employees in accordance
25 with California law.

26 32. At all times mentioned herein, Defendant and/or DOES did not reimburse Plaintiff and the
27 aggrieved employees for business expenses.

28 33. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that

1 they had a duty to compensate Plaintiff and the other aggrieved employees in accordance with
2 California law, and that Defendant and DOES had the ability to pay such compensation, but
3 willfully and intentionally failed to do so, and Defendant and DOES falsely represented to
4 Plaintiff and the other aggrieved employees that they were properly compensating Plaintiff and
5 the other aggrieved employees.

6 34. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
7 Plaintiff and the other aggrieved employees were entitled to timely wages at the time of
8 termination. Defendant and/or DOES did not pay all timely wages owed, straight-time wages
9 owed, meal period premiums, and/or rest period premiums owed at the time of termination.

10 35. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the other
11 aggrieved employees a sum certain at the time of termination or within seventy-two (72) hours
12 of their resignation, and have failed to pay those sums for thirty (30) days thereafter.

13 36. Plaintiff brings this action on behalf of himself and all other aggrieved employees defined as
14 all non-exempt automotive technicians, mechanics, or similar job designations, and all
15 similarly situated non-exempt aggrieved employees of Defendant and/or DOES within the
16 State of California, employed beginning one year prior to the date Plaintiff sent Notice to the
17 LWDA.

18 37. Plaintiff reserves the right to amend or modify the definition of aggrieved employees with
19 respect to the issues or in any other way.

20 **FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
21 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages**
22 **for All Work Performed (Cal. Lab. Code §2698 et. seq.).**

23 38. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
24 as if fully plead.

25 39. It is fundamental that an employer must pay its employees for the time worked. Cal. Lab.
26 Code § 222 prohibits the withholding on part of a wage. Cal. Lab. Code § 223 prohibits the
27 pay of less than a statutory or contractual wage scale. Cal. Lab. Code §§ 1194-1197.1 prohibits
28 the payment of less than the minimum wage. Cal. Lab. Code § 224 only permits deductions

1 from wages when the employer is required or empowered to do so by state or federal law or
2 when the deduction is expressly authorized in writing by the employee for specified purposes
3 that do not in effect reduce the agreed upon wage.

4 40. Cal. Lab. Code § 1197.1 of the California Labor Code states “[a]ny employer or other person
5 acting individually as an officer, agent, or employee of another person, who pays or causes to
6 be paid to any employee a wage less than the minimum fixed by an applicable state or local
7 law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
8 liquidated damages payable to the employee, and any applicable penalties pursuant to Section
9 203.”

10 41. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved
11 employees for all hours worked. Defendant and/or DOES have not paid for all the time Plaintiff
12 and the aggrieved employees worked throughout the day. Including, but not limited to, time
13 spent working through meal periods, and/or any other time in the day when the employees
14 were performing work tasks, subject to the control of their employer and/or otherwise had work
15 duties. Plaintiff and aggrieved employees are always subjected to Defendant’s and/or DOES’
16 control throughout the workday, even during unpaid periods of the workday.

17 42. Plaintiff and the aggrieved employees were employed by Defendant and/or DOES at all
18 relevant times. Defendant and/or DOES were required to compensate Plaintiff for all hours
19 worked and were prohibited from making deductions that had the effect of reducing the agreed
20 upon wage.

21 43. Plaintiff and the aggrieved employees were entitled to be paid the minimum wage for all time
22 worked. By failing to pay for all work performed, including time spent subject to Defendant’s
23 and/or DOES’ control, Defendant’s and/or DOES’ compensation to Plaintiff and the aggrieved
24 employees fell below the applicable minimum wage.

25 44. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
26 wages, and lost interest on such wages, and expenses.

27 45. Defendant and/or DOES committed the acts alleged herein knowingly and willfully, with the
28 wrongful and deliberate intention of injuring Plaintiff and the aggrieved employees. Defendant

1 and/or DOES acted with malice or in conscious disregard of Plaintiff's and the aggrieved
2 employees' rights.

3 46. These claims are for Plaintiff and all non-exempt automotive technicians, mechanics, or similar
4 job designations, and all similarly situated non-exempt aggrieved employees of Defendant
5 and/or Does within the State of California.

6 47. Plaintiff, as a former non-exempt employee of Defendant and/or DOES who Defendant's
7 and/or DOES' failed to pay all wages, is an aggrieved employee with standing to bring an
8 action under the PAGA. Plaintiff satisfied all prerequisites to serve as representatives of the
9 general public to enforce California's labor laws, and the penalty provisions identified in Cal.
10 Lab. Code § 2699.5.

11 48. Plaintiff, as a representative of the people of the State of California, will seek any and all
12 penalties otherwise capable of being collected by the Labor Commission and/or the
13 Department of Labor Standards Enforcement (DLSE). This includes each of the following, as
14 set forth in Cal. Lab. Code § 2699.5, which provides that section 2699.3(a) applies to any
15 alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

16 49. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
17 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
18 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
19 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
20 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

21 50. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
22 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
23 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
24 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
25 pursuant to Cal. Lab. Code § 558(a).

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SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay All Overtime and Doubletime Wages Owed

51. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

52. Cal. Lab. Code § 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

53. Cal. Lab. Code § 510 dictates that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

54. Defendant and/or DOES failed to pay overtime when employees worked over eight (8) hours per day and when employees worked over 40 hours per week. Plaintiff and the aggrieved employees frequently worked over 8 hours per day or over 40 hours per week.

55. Defendant and/or DOES failed to pay proper double time when Plaintiff and the aggrieved employees worked seven days in a row or over twelve hours in a day.

56. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked. Plaintiff and the aggrieved employees have been subject to Defendant's and/or DOES' control pre-shift, post-shift, and during unpaid meal periods resulting in unpaid overtime where they are not getting paid, which, when working overtime eligible shifts results in underpaid overtime compensation.

57. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked. Defendant and/or DOES have not paid for all the time Plaintiff and the aggrieved employees worked throughout the day. Including, but not limited to, time spent working through meal periods, and/or any other time in the day when the employees

1 were performing work tasks, subject to the control of their employer and/or otherwise had work
2 duties. Plaintiff and the aggrieved employees frequently work over eight daily and forty weekly
3 hours, and, therefore, this compensable time is owed at the overtime rates of Plaintiff and the
4 aggrieved employees.

5 58. Defendant and/or DOES failed to pay Plaintiff and the aggrieved employees at the appropriate
6 rate of pay, such as overtime pay. Specifically, Defendant and/or DOES failed to incorporate
7 bonuses, split shift premiums, fringe benefits, commissions, and all hourly-rate and/or piece-
8 rate elements into overtime pay calculations.

9 59. In every pay period during the relevant statute of limitations, Plaintiff and the aggrieved
10 employees did not earn at least one-and-a-half times the minimum wage nor did they earn more
11 than half their income in the form of commissions.

12 60. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
13 wages, and lost interest on such wages, and expenses.

14 61. These claims are for Plaintiff and all non-exempt automotive technicians, mechanics, or similar
15 job designations, and all similarly situated non-exempt aggrieved employees of Defendant
16 and/or Does within the State of California.

17 62. Plaintiff, as a representative of the people of the State of California, will seek any and all
18 penalties otherwise capable of being collected by the Labor commission and/or the Department
19 of Labor Standards Enforcement (DLSE) for violations of Cal. Lab. Code § 510.

20 63. Plaintiff, as a representative of the people of the State of California, will seek all penalties
21 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
22 each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that Section
23 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.

24 64. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
25 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
26 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
27 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
28 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

65. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Meal Periods (Cal. Lab. Code §2698 et. seq.).

66. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

67. Under Cal. Lab. Code § 512, and IWC Wage Order 4-2001, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

68. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

69. Under Cal. Lab. Code § 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

70. Defendant and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods to its hourly, non-exempt employees who worked for work periods of more than five (5) consecutive hours. As such, Defendant and/or DOES non-exempt workers were required to work over five

(5) consecutive hours at a time without being provided a thirty (30) minute uninterrupted meal period within that time.

71. Defendant and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods to its Non-Exempt employees for every five (5) continuous hours worked.

72. Defendant and/or DOES has a consistent policy and/or practice of not providing meal periods to Plaintiff and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Defendant's and/or DOES' business model was such that Plaintiff and the aggrieved employees were assigned too much work that could not be reasonably completed in their assigned shift. The result is that Defendant and/or DOES employees routinely and regularly are forced to eat their meals while working. Defendant and/or DOES have a consistent policy and/or practice of not providing meal periods to Plaintiff and all aggrieved employees and/or providing compensation in lieu thereof. As a matter of policy and practice, Defendant and/or DOES do not provide employees with full 30-minute meal periods for each day worked where they are free from Defendant's and/or DOES' control. Plaintiff and aggrieved employees are always subjected to Defendant's and/or DOES' control throughout the workday, even during mandated breaks and meal periods. As a matter of policy and practice, Defendant and/or DOES do not provide 30-minute meal periods before the end of the fifth hour. As a matter of policy and practice, Defendant and/or DOES do not provide a full 30-minute second meal period when employee shifts eclipse 10-hours wherein employees are free from Defendant's and/or DOES' control. Defendant and/or DOES do not provide second 30-minute meal periods before the end of the tenth hour. Due to the thrust of business, Defendant's and/or DOES' policies and practices encourage employees to stay working on the production floor, as opposed to encouraging the rest and nourishment meal periods are designed to provide. As a matter of policy and practice, Defendant and/or DOES fails to relinquish all control over employees to permit them with reasonable opportunities to take meal periods.

73. Moreover, Defendant and/or DOES did not have a policy of providing a second meal period to employees before the end of the tenth hour.

1 74. By failing to provide statutory first and/or second meal periods, and by failing to provide
2 compensation for unprovided meal periods, as alleged above, Defendant willfully violated the
3 provisions of Cal. Lab. Code §§ 226.7 and 512.

4 75. These claims are for Plaintiff and all non-exempt automotive technicians, mechanics, or similar
5 job designations, and all similarly situated non-exempt aggrieved employees of Defendant
6 and/or Does within the State of California.

7 76. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal
8 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
9 has satisfied all prerequisites to serve as a representative of the general public to enforce
10 California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5.

11 77. Plaintiff, as a representative of the people of the State of California, will seek all penalties
12 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
13 each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that Section
14 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.

15 78. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
16 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
17 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
18 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
19 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

20 79. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
21 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
22 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
23 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
24 pursuant to Cal. Lab. Code § 558(a).

25 **FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
26 **Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Rest Periods (Cal. Lab.**
27 **Code §2698 et. seq.).**

28 80. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein

as if fully plead.

81. Industrial Welfare Commission Order No. 4-2001 section 12(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

82. At all times mentioned herein, Defendant and/or DOES failed to authorize and/or permit rest period time based upon the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

83. Defendant and/or DOES has had a consistent policy and/or practice of not providing rest periods to Plaintiff and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Plaintiff and the aggrieved employees work up to twelve (12) hour shifts but did not receive first, second, third, or fourth rest breaks.

84. As a matter of policy and practice, Defendant and/or DOES do not authorize and permit employees to take net ten-minute rest breaks every four hours or major fraction thereof. Defendant’s and/or DOES’ policies and practices encourage production over breaks. Likewise, Defendant’s and/or DOES’ policies and practices fail to relinquish all control over employees during breaks. In sum, this time is counted as part of Plaintiff, and the aggrieved employees’ rest period, even though they remain subject to Defendant’s and/or DOES’ control, thereby denying Plaintiff and the aggrieved employees of the right to be completely free from employer control under California law.

85. Defendant and/or DOES have a consistent policy and/or practice of not providing net ten-minute rest breaks to Plaintiff and all aggrieved employees and/or providing compensation in lieu thereof. Plaintiff and the aggrieved employees are required to work through rest periods to complete the demanding duties required by Defendant and/or DOES, thereby denying them their right to be completely free from employer control under California law. As a matter of policy and practice, Defendant and/or DOES have not authorized and permitted employees to take duty-free rest breaks.

1 86. Furthermore, Defendant and/or DOES breached the legal duty to provide rest periods to
2 employees by failing to provide Plaintiff and all aggrieved employees with a suitable resting
3 facility in which to take their rest breaks in violation of Industrial Welfare Commission Order
4 No. 4-2001 section 13(B).

5 87. Defendant and/or DOES breached the duty to provide rest periods to Plaintiff and all aggrieved
6 employees by imposing a continuous and consistent policy requiring employees to remain
7 under its control during breaks. Subjecting aggrieved employees to control during breaks
8 violates Cal. Lab. Code § 226.7's and Wage Order 4-2001's requirement that rest periods, like
9 meal periods, be free of all employer restraints and controls. Employees working time-
10 qualifying shifts, then, have not received compliant rest periods and have been entitled to the
11 Cal. Lab. Code § 226.7 premiums.

12 88. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per
13 day by non-exempt employees, and by failing to provide compensation for these unprovided
14 periods, as alleged above, Defendant and/or DOES willfully violated the provisions of Cal.
15 Lab. Code § 226.7.

16 89. These claims are for Plaintiff and all non-exempt automotive technicians, mechanics, or similar
17 job designations, and all similarly situated non-exempt aggrieved employees of Defendant
18 and/or Does within the State of California.

19 90. Plaintiff—a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest
20 periods—is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
21 has satisfied all prerequisites to serve as a representative of the general public to enforce
22 California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 and
23 Industrial Welfare Commission Order No. 4-2001 § 20 for violations of Cal. Lab. Code § 226.7
24 and Industrial Welfare Commission Order No. 4-2001 § 12(A).

25 91. Plaintiff, as a representative of the people of the State of California, will seek all penalties
26 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
27 each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section
28 2699.3(a) applies to any alleged violation of the following provisions: section 226.7.

1 92. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
2 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
3 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
4 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
5 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

6 93. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
7 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
8 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
9 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
10 pursuant to Cal. Lab. Code § 558(a).

11 **FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
12 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Wages Due at Termination**
13 **and During Employment (Cal. Lab. Code §2698 *et. seq.*).**

14 94. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
15 as if fully plead.

16 95. Defendant and/or DOES and/or their officers and/or managing agents willfully failed to pay,
17 in a timely manner, wages owed to Plaintiff and the other aggrieved employees who left
18 Defendant's and/or DOES' employ or who were terminated.

19 96. Plaintiff and/or the other aggrieved employees who ended their employment with Defendant
20 and/or DOES during the last year were entitled to be promptly paid all lawful compensation,
21 and other premiums, as required by Cal. Lab. Code §§ 201 through 203.

22 97. At all relevant times, Cal. Lab. Code §§ 201 and 202 provide that if an employer discharges
23 an employee, the wages earned and unpaid at the time of discharge are due and payable
24 immediately, and if an employee quits his or her employment, his or her wages shall become
25 due and payable no later than seventy-two (72) hours thereafter, unless the employee has given
26 seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is
27 entitled to his or her wages at the time of quitting.

28 98. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to

1 pay Plaintiff and the other aggrieved employees who are no longer employed by Defendant
2 and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their
3 leaving Defendant's and/or DOES' employ. For example, Defendant and/or DOES failed to
4 pay all piece-rate units earned and bonuses earned at the time of termination or within a time
5 required under California Law. Defendant and/or DOES required Plaintiff and the aggrieved
6 employees to wait to be paid their bonuses and/or piece-rate units until the next pay date
7 occurring well after seventy-two (72) hours of their leaving Defendant's and/or DOES'
8 employ.

9 99. Defendant's and/or DOES' failure to pay Plaintiff and the aggrieved employees who are no
10 longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within
11 seventy-two (72) hours of their leaving Defendant's and/or DOES' employ, is in violation of
12 Cal. Lab. Code §§ 201 and 202.

13 100. Defendant and/or DOES forced Plaintiff and all formerly employed aggrieved employees to
14 forfeit bonuses and/or piece-rate units earned upon termination. Defendant and/or DOES's
15 forfeiture provisions in its commission agreements are unenforceable and unconscionable. And
16 Defendant and/or DOES failed to pay Plaintiff and all formerly employed aggrieved employees
17 all bonuses and/or piece-rate units withheld or forfeited after termination. The forfeiture
18 provision is a commercially unreasonable forfeiture clause, exacting a penalty far more than
19 any potential detriment suffered by Defendant and/or DOES.

20 101. Cal. Lab. Code § 203 provides that when an employer willfully fails to pay wages owed, in
21 accordance with sections 201 and 202, the wages of the employee shall continue as a penalty
22 from the due date thereof at the same rate until paid or until and action is commenced; but the
23 wages shall not continue for more than thirty (30) days.

24 102. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to pay all wages due
25 at termination, is an aggrieved employee with standing to bring an action under the
26 PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to
27 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
28 2699.5.

1 103. Plaintiff, as a representative of the people of the State of California, seeks all penalties
2 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
3 Standards Enforcement (“DLSE”). This includes each of the following, as set forth in Cal. Lab.
4 Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the
5 following provisions: sections 201 through 203.

6 104. These claims are for Plaintiff and all non-exempt automotive technicians, mechanics, or similar
7 job designations, and all similarly situated non-exempt aggrieved employees of Defendant
8 and/or Does within the State of California.

9 105. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
10 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
11 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
12 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
13 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

14 106. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
15 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
16 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
17 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
18 pursuant to Cal. Lab. Code § 558(a).

19 **SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
20 **Private Attorneys General Act of 2004 (PAGA) for Knowing and Intentional Failure to Comply**
21 **with Itemized Employee Wage Statement Provisions (Cal. Lab. Code § 2698 *et. seq.*).**

22 107. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
23 as if fully plead.

24 108. Cal. Lab. Code § 226 subdivision (a) requires Defendant and/or DOES to itemize in wage
25 statements all deductions from payment of wages and to accurately report total hours worked
26 by Plaintiff and the other aggrieved employees. Cal. Lab. Code § 226(a) requires Defendant
27 and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees,
28 either as an detachable part of the check, draft, or voucher paying the employee’s wages, or

1 separately when wages are paid by personal check or cash, an accurate itemized statement in
2 writing showing (1) gross wages earned, (2) total hours worked by the employee...(3) the
3 number of piece-rate units earned and any applicable piece rate if the employee is paid on a
4 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
5 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
6 dates of the period for which the employee is paid, (7) the name of the employee and only the
7 last four digits of his or her social security number or an employee identification number other
8 than the social security number, (8) the name and address of the legal entity that is the
9 employer...(9) all applicable hourly rates in effect during the pay period and the corresponding
10 number of hours worked at each hourly rate and the corresponding number of hours worked at
11 each hourly rate by the employee....”

12 109. Cal. Lab. Code § 226, subdivision (a) also requires that “deductions made from payment of
13 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day
14 and year, and a copy of the statement and the record of the deductions shall be kept on file by
15 the employer for at least three years at the place of employment or at a central location within
16 the State of California.”

17 110. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to
18 provide Plaintiff and the aggrieved employees with wage statements at the time of each
19 payment.

20 111. Even if the wage statements were provided adequately, Defendant and/or DOES have
21 knowingly and intentionally failed to comply with Cal. Lab. Code § 226(a) on each and every
22 wage statement provided to Plaintiff and the other aggrieved employees.

23 112. Defendant and/or DOES knowingly and intentionally failed to accurately itemize the gross
24 wages earned, bonuses, and/or commissions on Plaintiff’s and the aggrieved employees’ wage
25 statements.

26 113. In every pay period during the period of the relevant statute of limitations, Defendant and/or
27 DOES knowingly and intentionally did not include the number of piece-rate units earned and
28 any applicable piece rate on wage statements.

1 114. In every pay period during the period of the relevant statute of limitations, Defendant and/or
2 DOES knowingly and intentionally did not itemize the total hours worked on wage statements
3 as Cal. Lab. Code § 226, subsection (a), requires. In every pay period during the period of the
4 relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not
5 include the total hours worked on wage statements and failed to include this information
6 accurately. Defendant and/or DOES therefore knowingly and intentionally failed to itemize
7 the total hours worked on Plaintiff's and the aggrieved employees' wage statements.

8 115. In every pay period during the period of the relevant statute of limitations, the total regular and
9 overtime hours listed in Defendant's and/or DOES' wage statements, when added together, do
10 not sum up to the total hours worked by the employee during the pertinent time period. Without
11 additional information regarding the wage statement, an employee cannot simply 'arrive at the
12 sum of hours worked.' Thus, Defendant's and/or DOES' wage statement do not comply
13 with Cal. Lab. Code § 226(a)(2).

14 116. Defendant and/or DOES had a uniform policy of deducting 30-minutes each workday from
15 Plaintiff's and the aggrieved employees' wages for meal periods, despite Plaintiff and the
16 aggrieved employees working during and throughout the time period of the deduction.
17 Defendant and/or DOES violated the Cal. Lab. Code § 226, subdivision (a) requirement of
18 itemizing all deductions from wages. As Defendant and/or DOES knew or had reason to know
19 Plaintiff and the aggrieved employees worked during meal periods, Defendant and/or DOES
20 knowingly and intentionally failed to comply with Cal. Lab. Code § 226, subdivision (a).

21 117. In every pay period during the period of the relevant statute of limitations, Defendant and/or
22 DOES knowingly and intentionally did not include the name of the legal entity that is the
23 employer thereby failing to furnish accurate itemized statements. *See, e.g.*, Cal. Lab. Code
24 226(a)(8). Plaintiff and the aggrieved employees could not promptly and easily determine the
25 employer's name from the wage statements alone.

26 118. In every pay period during the period of the relevant statute of limitations, Defendant and/or
27 DOES has knowingly and intentionally failed to properly itemize the overtime rate and hours
28 worked, making it impossible to determine the correct pay rate promptly and easily with the

1 corresponding hours and pay. Plaintiff and the aggrieved employees' wage statements
2 incorrectly show the overtime rate and incorrectly show the number of overtime hours worked
3 at a different number of hours than worked by the employee during the pay period. Thus, if the
4 employee were to add together the hours listed in the line items for regular and overtime hours,
5 the total is incorrect because it exceeds the total number hours actually worked by the employee
6 during the pay period. As such, Defendant and/or DOES' s wage statement does not comply
7 with Labor Code Section 226(a)(9) which requires an itemized statement to show 'all
8 applicable hourly rates in effect during the pay period and the corresponding number of hours
9 worked at each hourly rate by the employee.'" The coding on Defendant's and/or DOES' wage
10 statements cannot be said to clearly engage the employee's use of simple math to understand
11 the rates of pay and total hours worked itemized on the wage statements. Defendant's and/or
12 DOES' wage statements here confuse and mislead Plaintiff and the aggrieved employees as to
13 what the rates of pay and total hours worked are, a confusion that does not disappear by
14 itemizing the total hours worked on the wage statements.

15 119. In every pay period during the period of the relevant statute of limitations, Defendant and/or
16 DOES knowingly and intentionally did not include the net wages earned on wage statements.

17 120. In every pay period during the period of the relevant statute of limitations, Defendant and/or
18 DOES knowingly and intentionally did not include Plaintiff's and the aggrieved employees net
19 wages on wage statements and failed to itemize this amount accurately.

20 121. In every pay period, Defendant and/or DOES have a consistent policy and/or practice of not
21 itemizing all applicable hourly rates in effect during the pay period and the corresponding
22 number of hours worked at each hourly rate by the employee or providing accurate rates as
23 well as the corresponding number of hours worked at each rate.

24 122. In every pay period during the period of the relevant statute of limitations, Defendant and/or
25 DOES knowingly and intentionally did not include all deductions on Plaintiff's and the
26 aggrieved employees' wage statements and/or failed to itemize deductions accurately.

27 123. In every pay period during the period of the relevant statute of limitations, Defendant and/or
28 DOES knowingly and intentionally did not include the inclusive dates for which the employees

are paid or the last for digits of the aggrieved employees social security number or an employee identification number and/or failed to itemize this information accurately.

124. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not itemize the amount of paid sick leave/paid time off Plaintiff and the aggrieved employees have available on Plaintiff's and the aggrieved employees' wage statements.

125. Throughout the statutory period, because of the knowing and intentional failure by Defendant and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the aggrieved employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

126. These claims are for Plaintiff and all non-exempt automotive technicians, mechanics, or similar job designations, and all similarly situated non-exempt aggrieved employees of Defendant and/or Does within the State of California.

127. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to provide accurate and itemized wage statements, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5.

128. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226, 1174, 1199.

129. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

1 130. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
2 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
3 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
4 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
5 pursuant to Cal. Lab. Code § 558(a).

6 **SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
7 **Private Attorneys General Act of 2004 (PAGA) for Failing to Pay Employees Twice Per Month**
8 **(Cal. Lab. Code § 2698 *et. seq.*).**

9 131. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
10 as if fully plead.

11 132. Cal. Lab. Code § 204(a) of the *California Labor Code* requires that all wages earned by any
12 person in any employment are due and payable twice during each calendar month, on days
13 designated in advance by the employer as the regular paydays.

14 133. Cal. Lab. Code § 226 subdivision (a) provides “[a]ll wages . . . earned by any person in any
15 employment are due and payable twice during each calendar month, on days designated in
16 advance by the employer as the regular paydays. Labor performed between the 1st and 15th
17 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the
18 month during which the labor was performed, and labor performed between the 16th and the
19 last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the
20 following month.”

21 134. Defendant and/or DOES have a consistent policy and/or practice of failing to pay Plaintiff and
22 the aggrieved employees twice per month. By failing to pay employees twice per month,
23 Defendant and/or DOES willfully violated the provisions of Cal. Lab. Code § 204(a).

24 135. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to
25 pay Plaintiff and the aggrieved employees their wages, bonuses, and/or piece rate units that
26 were earned and unpaid, twice during each calendar month.

27 136. Defendant and/or DOES failure to pay Plaintiff and the aggrieved employees their wages,
28 bonuses, and/or piece rate unites that were earned and unpaid, twice during each calendar

- 1 month, is in violation of Cal. Lab. Code § 204.
- 2 137. These claims are for Plaintiff and all non-exempt automotive technicians, mechanics, or similar
3 job designations, and all similarly situated non-exempt aggrieved employees of Defendant
4 and/or Does within the State of California.
- 5 138. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed pay all wages owed
6 twice per month, is an aggrieved employee with standing to bring an action under the PAGA.
7 Plaintiff has satisfied all prerequisites to serve as a representative of the general public to
8 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
9 2699.5 for violations of Cal. Lab. Code § 204.
- 10 139. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
11 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
12 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
13 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
14 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).
- 15 140. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
16 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
17 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
18 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
19 pursuant to Cal. Lab. Code § 558(a).

20 **EIGHTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
21 **Private Attorneys General Act of 2004 (PAGA) for Failing to Adopt a Compliant Sick Pay/Paid**
22 **Time Off Policy (Cal. Lab. Code § 2698 *et. seq.*)**

- 23 141. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
24 as if fully plead.
- 25 142. Section 246(a)(1) of the California Labor Code states: "An employee who, on or after July 1,
26 2015, works in California for the same employer for 30 or more days within a year from the
27 commencement of employment is entitled to paid sick days as specified in this section."
- 28 143. Section 246(c) of the Labor Code states: "An employee shall be entitled to use accrued paid

sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.”

144. Section 233(c) of the California Labor Code states: “An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.”

145. Section 233(d) of the California Labor Code provides relief for violations of this section, stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.”

146. Section 234 of the California Labor Code further forbids employers from adopting an “absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.”

147. Defendant and/or DOES have failed to provide Plaintiff and the aggrieved employees with paid sick days in compliance with Section 246 and Section 246.5. Defendant and/or DOES have had a policy and practice which denied Plaintiff and the aggrieved employees from accruing paid sick days after having been employed by Defendant and/or DOES for 30 or more days. Defendant and/or DOES have a policy and practice which denied Plaintiff and the aggrieved employees of using their paid sick days after having been employed by Defendant and/or DOES for 90 or more days.

148. Further, Defendant and/or DOES have adopted a policy and practice that denies Plaintiff and the aggrieved employees the ability to use their sick days in compliance with Labor Code Sections 233 and 246.5. For example, Defendant and/or DOES threaten to discipline or discharge the aggrieved employees for failing to provide Defendant and/or DOES with sufficient advanced notice of their intent to use their paid sick days in clear violation of Labor

Code Section 234. Plaintiff and the aggrieved employees were entitled to actual damages or one day's pay pursuant to Labor Code Section 233(d).

149. Defendant and/or DOES' sick pay policy has failed to pay sick pay for all appropriate and protected purposes enumerated in Labor Code section 233, 234, 246, and 246.5.

150. Defendant and/or DOES fail to itemize the amount of accrued/available sick leave employees have on wage statements each pay period.

151. These claims are for Plaintiff and all non-exempt automotive technicians, mechanics, or similar job designations, and all similarly situated non-exempt aggrieved employees of Defendant and/or Does within the State of California.

152. Plaintiff, as a non-exempt employee subject to Defendant and/or DOES' unlawful sick pay policy, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code §§ 233, 234, and 246.

153. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

154. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

NINTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Reimburse Employees for Business Expenses (Cal. Lab. Code § 2698 et. seq.)

155. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein

1 as if fully plead.

2 156. Cal. Lab. Code § 2802(a) requires “[a]n employer [to] indemnify his or her employee for all
3 necessary expenditures or losses incurred by the employee in direct consequence of the
4 discharge of his or her duties.”

5 157. Plaintiff and the aggrieved employees incurred expenses in the discharge of their duties without
6 reimbursement from Defendant and/or DOES. As a direct consequence of discharging their
7 duties for Defendant and/or DOES and/or obeying Defendants’ and/or DOES’ directions,
8 Plaintiff and the aggrieved employees have necessarily incurred expenses for which they have
9 not been indemnified by Defendant and/or DOES. For example, Defendant and/or DOES has
10 failed to reimburse the purchase and depreciation of tools, including, but no limited to, scissors,
11 flashlights, drill bit sets, drills, OBD2 scanners, screwdrivers, breaker bars, impact wrenches,
12 steel step bits, drill drivers, extension cords, oil filter wrenches, solderings, angle die grinders,
13 metal saws, digital tire inflators, digital inspection cameras, torque wenchers, digital calipers,
14 utility knives, punches and chisels, wire stripper tools, stubby wrenches, and c-clamps,
15 cellphone costs (including minutes & data), and damage to customer vehicles and other
16 business-related expenses that, as the legal employer, Defendant and/or DOES is obligated to
17 pay and/or reimburse Plaintiff and the aggrieved employees for. Defendant and/or DOES have
18 failed to indemnify or in any manner reimburse Plaintiff and the aggrieved employees for these
19 expenditures and losses.

20 158. Cal. Lab. Code § 2802(a) has entitled Plaintiff and the aggrieved employees to reimbursement
21 for said necessary expenditures, plus interest and expenses which have not been paid.

22 159. By requiring Plaintiff and the aggrieved employees to pay expenses and cover
23 losses/adjustments (such as deductions from pay due to damages to a customer’s vehicle) that
24 they incurred in direct consequence of the discharge of their duties for Defendant and/or Does
25 and/or in obedience of Defendant’s and/or Does’ direction, Defendant and/or DOES have
26 violated and continues to violate Cal. Labor Code section 2802.

27 160. These claims are for Plaintiff and all non-exempt automotive technicians, mechanics, or similar
28 job designations, and all similarly situated non-exempt aggrieved employees of Defendant

and/or Does within the State of California.

161. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to reimburse for business expenses, is an aggrieved employee with standing to bring an action under the PAGA.

162. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 2802.

163. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

164. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays for relief and judgment against Defendant and/or DOES, jointly and severally, as follows:

- A. For penalties as provided under Cal. Lab. Code § 558(a)(1) and 558(a)(2).
- B. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide compliant meal periods;
- C. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid meal periods;
- D. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide all rest periods;
- E. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*

- 1 for each pay period during which an employee was underpaid due to failure to provide paid
2 rest periods;
- 3 F. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
4 for failure to timely pay wages at separation;
- 5 G. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
6 for failure to provide compensation at the regular, overtime, and double time rate for all time
7 worked;
- 8 H. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
9 for failure to provide compensation at the minimum wage;
- 10 I. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
11 for failure to provide accurate, itemized wage statements;
- 12 J. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
13 for failure to pay employees all wages owed twice per month;
- 14 K. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
15 for failure to adopt a sick pay policy compliant with California law;
- 16 L. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
17 for failure to reimburse business expenses; and,
- 18 M. For reasonable attorneys' fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff demands a jury trial.

21 **MARA LAW FIRM, PC**

22
23
24 Date: January 29, 2021

Signed: 

David Mara, Esq.

Tony Roberts, Esq.

Attorneys for Plaintiff HIEN PHAN, on behalf
of himself and all others similarly situated,
and on behalf of the general public