Nicholas A. Carlin, State Bar No. 112532
Brian S. Conlon, State Bar No. 303456
PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201- The Presidio
San Francisco, CA 94129
Telephone: 415-398-0900
Fax: 415-398-0911
Email: nac@phillaw.com
bsc@phillaw com

Attorneys for Plaintiff

FILED/ENDORSED
Clerk of the Superior Court
JAN 07 2021
By K. SHRONTZ
DEPUTY CLERK

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SOLANO

HUY TRAN, individually, on behalf of all others similarly situated, and as a representative aggrieved employee, and SOULINTHONG SOUNGPANYA, individually and on behalf of all others similarly situated, Plaintiffs, vs. WISE AUTO GROUP; ANTHONY A. BATARSE, INC., a California Corporation; LLOYD A. WISE MOTORS, INC., a California Corporation; LLOYD A. WISE CORP., a California Corporation; VALLEJO NISSAN, INC., a California Corporation; ANTHONY A. BATARSE MOTORS, INC., a California Corporation; and DOES 1 through 50 Defendants.	Case No. FCS055892 **CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE CALIFORNIA LABOR CODE, UNFAIR COMPETITION LAW, AND RELATED CAUSES OF ACTION** **DEMAND FOR JURY TRIAL** ASSIGNED TO JUDGE E. Bradley Nelson FOR ALL PURPOSES

Plaintiffs Huy Tran and Soulinthong Sonungpanya ("Plaintiffs"), individually and on behalf of all others similarly situated, allege as follows:

I. INTRODUCTION

1. This is a class action under the California Labor Code for wage and hour violations and a representative action under the California Labor Code Private Attorney General

Act of 2004 ("PAGA") brought against Wise Auto Group, and certain of its subsidiaries and other affiliated entities which collectively own and operate at least fifteen "Wise" automobile and motorcycle dealerships in Northern California (the "Dealerships"). Plaintiffs, who were employed at Defendants' Wise Kia of Vacaville, Wise Nissan of Vacaville, and Wise Nissan of Vallejo dealerships between March 2017 and March 2020 as service advisors, bring this action individually, and on behalf of all other similarly situated employees employed at Defendants' Dealerships. Plaintiff Tran also brings this action as a representative aggrieved employee.

2. Defendants did not want to pay premium wages (for missed meal and rest breaks) to their Dealership employees. But instead of simply permitting their employees to take meal and rest breaks or paying premium pay when they were not able to take breaks, Defendants achieved their goal by forcing employees to fill out correction forms to falsely show that they received code-compliant meal breaks when Defendants knew that no breaks were taken at all and assuming that all employees always took their meal and rest breaks when Defendants knew this was not true. Further, Defendants threatened and disciplined employees who refused to sign timecards or correction sheets Defendants knew were false.

3. In addition to denying their employees proper meal and rest breaks, Defendants engaged in numerous other Labor Code violations, including failing to compensate employees for all hours worked, to compensate commission employees for time spent unrelated to earning a sales commission, or to compensate for or permit rest breaks, failing to properly pay overtime compensation, engaging in false recordkeeping practices, and failing to reimburse employees for using their personal phones for work.

4. Plaintiffs allege that Defendants have engaged – and continue to engage – in a pattern of violations of IWC Wage Order 4-2001 and 7-2001[1] and of numerous Labor Code sections, including 201, 202, 203, 204, 206, 221, 223, 224, 226, 226.7, 510, 512, 558, 1194,

[1] Courts are divided as to which Wage Order applies to employees of establishments that both sell and service vehicles. Compare *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (applying Wage Order No. 4) and *Ontiveros v. Zamora* (E.D. Cal. Feb. 20, 2009) 2009 WL 425962 (same) with *Keyes Motors, Inc. v. DLSE* (I 987) 197 Cal.App.3d 557 (applying Wage Order No. 7). The two Orders are identical in all relevant respects; as such, they are referred to collectively herein as the "Wage Orders."

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

1198, and 2802. In addition to damages, Plaintiff Tran, as a representative of all current and former aggrieved employees, also seeks civil penalties under PAGA against Defendants for these violations.

II. THE PARTIES

5. Plaintiff Huy Tran is a California resident. He was employed by Defendants at Wise Kia of Vacaville (in or about December 2018 to December 2019), Wise Nissan of Vacaville (in or about December 2019 to March 2020) in Vacaville, California as a service advisor.

6. Plaintiff Soulinthong "Bay" Soungpanya is a California resident. He was employed by Defendants at Wise Nissan of Vallejo in Vallejo, California as a service advisor and service manager from on or about February 2017 to December 2018, at Wise Kia of Vacaville in Vacaville, California as a service manager from on or about December 2018 to June 2019, and at Wise Nissan of Vacaville from on or about June 2019 to March 2020 as a service advisor.

7. Defendant Wise Auto Group ("WISE AUTO GROUP") is, on information and belief, a business entity the exact form of which is currently unknown, which is the parent company for all other Wise entities and owns and operates at least fifteen Dealerships in California. These Dealerships include: Wise GMC of Vacaville, Wise Dodge Chrysler Jeep of Vacaville, Wise Golden State Nissan, Wise Harley-Davidson of Yuba City, Wise Hyundai of Vacaville, Wise Infiniti of Marin, Wise Kia of Vacaville, Wise Mazda of Vacaville, Wise Nissan of Sacramento, Wise Nissan of Vacaville, Wise Nissan of Yuba City, Wise North Bay Nissan, Wise Redwood Harley-Davidson, Wise Vallejo Nissan, and Wise Buick GMC of Vacaville. Those dealerships are in turn partially owned and operated by various related and/or subsidiary entities, including, but not limited to, defendants Anthony A. Batarse, Inc., Lloyd A. Wise Motors, Inc., Lloyd A. Wise Corp., Vallejo Nissan, Inc., and Anthony A. Batarse Motors, Inc. which all share officers, directors, employees, and a principal place of business in Vacaville, California.

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

8. Defendant Anthony A. Batarse, Inc. is, on information and belief, a California corporation with its principal place of business in Vacaville, California. It is the entity that appeared on Plaintiffs' paystubs when they worked at Wise Kia of Vacaville.

9. Defendant Lloyd A. Wise Motors, Inc. is, on information and belief, a California corporation with its principal place of business in Vacaville, California. It is the entity that appeared on Plaintiffs' paystubs when they worked at Wise Nissan of Vacaville.

10. Defendant Lloyd A. Wise Motors, Inc. is, on information and belief, a California corporation with its principal place of business in Vacaville, California.

11. Defendant Vallejo Nissan, Inc. is, on information and belief, a California corporation with its principal place of business in Vallejo, California.

12. Defendant Anthony A. Batarse Motors, Inc. is, on information and belief, a California corporation with its principal place of business in Vacaville, California.

13. The true names or capacities, whether individual, corporate, associate, or otherwise of Defendants Does 1 to 50, inclusive, being unknown, Plaintiffs assert their claims against these Defendants under fictitious names pursuant to California Code of Civil Procedure § 474.

14. Plaintiffs will amend their Complaint to allege such Doe Defendants' true names and capacities once they are ascertained.

15. Plaintiffs are informed and believe, and thereon allege, that each Defendants named in this Complaint, and each Doe Defendant, are in some manner responsible for the wrongs and damages alleged below, and in so acting was functioning as the joint employer of Plaintiffs, Class Members, and the aggrieved employees, and/or as the agent, servant, partner, alter ego and/or employee of the other Defendants, and in doing the actions described below, was acting within the course and scope of its authority as such joint employer, agent, servant, partner, and/or employee with the permission and consent of each of the other Defendants. Defendants and all of their subsidiaries, agents, servants, partners, and/or alter egos further comprise a single enterprise. All acts herein alleged were approved of and ratified by the other Defendants.

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

III. FACTUAL ALLEGATIONS

16. Defendants employ numerous individuals in the Dealerships in hourly, non-exempt positions including (a) salespeople; (b) clerical/office workers (*e.g.*, receptionists, warranty administrators, customer service representatives); (c) service advisors and assistant managers; and (d) service technicians.

17. Employees who work on commission, such as service advisors like Plaintiffs, *may* be exempt from overtime pay requirements, pursuant to the Wage Orders. However, even assuming (without conceding) that an overtime exemption applies, such employees are *not* exempt from any of the other Labor Code protections addressed herein, such as meal and rest break requirements.

18. WISE AUTO GROUP and each individual Defendant is a joint employer of each of the employees of the Dealerships, including Plaintiffs, Class Members, and aggrieved employees. While it appears that WISE AUTO GROUP and each individual Defendant has organized subsidiary entities which may nominally act as employers of at least some of the Dealership employees, such as in the case of Wise Kia of Vacaville and Wise Nissan of Vacaville, in fact, WISE AUTO GROUP and each individual Defendant exercises control over the wages, hours and working conditions of all Dealership employees and suffers or permit them to work there. WISE AUTO GROUP's website states that it has "700+" total employees and 16 locations, refers to individuals working at the Dealerships as "our employees," states that "our Managers and General Managers were promoted within the Wise Auto Group family," and says that "we encourage staff to move across stores, brands and the region" (https://www.wiseautogroup.com/wise-auto-group-jobs/, last visited December 15, 2020). Individual Dealerships' websites each link to the WISE AUTO GROUP website; the Dealerships use the same handbooks and the same pay plans, the Dealerships share the same human resources department and are overseen by the same individuals at the same corporate office. Individual Dealerships' management refer to Wise Auto Group as "corporate" and take orders from it.

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

DEFENDANTS' UNLAWFUL POLICY DESIGNED TO AVOID PAYING PREMIUM PAY AND OVERTIME

19. Defendants' custom, policy and practice has at all relevant times been not to pay premium pay to their employees when they have not been provided meal and rest periods.

20. Under this policy, all non-exempt employees (including commission salespeople and service advisors who *may* be exempt from overtime laws, but who are *not* exempt from meal and rest break laws) were required to clock out for meal breaks by the end of the fifth hour of each shift, but required employees to continue working off the clock; and required employees who did not clock out because they did not get breaks to falsely certify after the fact that they did receive timely meal breaks when Defendants knew employees did not.

21. Defendants took no action to actually provide compliant meal breaks, such as by providing scheduling that would allow employees to take compliant meal breaks, and instead required or suffered employees to continue working off the clock.

22. Even on the occasions when Plaintiffs and the other Dealership employees were able to take a meal break, it was generally not provided within the first five hours of work and was not "off-duty." Rather, the meal breaks that were taken were either untimely, not 30 minutes long, or were not "off-duty." Plaintiffs were required to perform their job duties during these purported breaks.

23. At all times relevant hereto, rest breaks were not provided to Plaintiffs and the other Dealership employees. Defendants were aware that employees were, more often than not, too busy with customers and/or their vehicles to take rest breaks and took no action to provide scheduling that could make it possible for employees to take them.

24. At all relevant times, Defendants failed to adequately pay service advisors and other commissioned employees separately for the rest periods in violation of the Wage Order Paragraph 4, as explained in *Vaquero v. Stoneledge Furniture*, *LLC* (2017) 9 Cal. App. 5th 98 or for time spent on non-sales duties.

25. Defendants failed to pay overtime for hours worked in excess of eight hours per day or 40 hours per week in violation of Labor Code sections 510, 1194, and 1198. On

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

information and belief, there were work weeks in which service advisors and other commissioned employees did not earn sufficient commissions (or salary plus commissions) to qualify for the commissioned sales overtime exemption of Paragraph 3(D) of the Wage Order. That is, these employees did not earn sufficient commissions such that more than half their earnings came from commissions, and/or their total compensation did not exceed one and one-half times the minimum wage. Service Advisors, including Plaintiffs, and other commissioned employees are entitled to overtime compensation for all work weeks in which they did not qualify for the exemption.

26. In addition, all employees are entitled to compensation for any and all time spent working off-the-clock.

27. Defendants failed to pay all earned wages (including overtime compensation, wages for off-the-clock work, premium pay for missed meal and rest breaks, and separate pay for the rest breaks of commissioned employees and time spent on non-commission-earning tasks for commission employees) at the time of termination or within 72 hours of resignation in violation of Labor Code sections 201, 202, 203, and 206. Plaintiffs', Class Members', and aggrieved employees' earned wages were not timely paid in full following their separation from Defendants.

28. Defendants failed to pay all earned wages (including overtime compensation, wages for off-the-clock work, premium pay for missed meal and rest breaks, and separate pay for the rest breaks of commissioned employees and time spent on non-commission-earning tasks for commission employees) at least twice a month in violation of Labor Code section 204.

29. Defendants failed to provide accurate, itemized statements of hours worked, wages, and deductions in violation of the Wage Order and Labor Code section 226. As described above, Defendants required employees to work off the clock (including but not limited to times when employees had their time records dictated to show that they received meal breaks or worked fewer hours than they actually did). Thus, not all hours worked were documented on employees' wage statements. Additionally, the wage statements did not reflect premium pay owed to the employees for missed meal and rest breaks.

30. Defendants did not reimburse employees like Plaintiffs for use of their personal cell phones which they were required to use for work purposes, including for being called back to work during attempted breaks, in violation of Labor Code Section 2802.

31. On information and belief, Defendants' practices are ongoing.

IV. FACTS SPECIFIC TO PLAINTIFFS

HUY TRAN

32. Plaintiff Huy Tran was employed by Defendants at Wise Kia of Vacaville as a service advisor from on or about December 2018 to December 2019 and at Wise Nissan of Vacaville as a service advisor from on or about December 2019 to March 2020.

33. Mr. Tran was paid on a draw plus commission basis but was a non-exempt employee (with the possible exception for overtime purposes). Mr. Tran was paid strictly on a commission basis with no hourly wage element and was not adequately paid separately for rest periods or for time spent performing non-sales-related duties.

34. Mr. Tran generally often worked very long hours—e.g., ten to twelve hours a day, five days a week. He frequently worked more than eight hours a day and more than 40 hours per week.

35. There were work weeks in which Plaintiff Tran did not earn sufficient commissions to qualify for the commissioned sales overtime exemption of Paragraph 3(D) of the Wage Orders. That is, during certain work weeks his total compensation did not exceed one and a half times the minimum wage. Mr. Tran was never paid for overtime.

36. Mr. Tran was generally not provided a 30-minute, off-duty meal break within his first five hours of work. He was never paid premium pay for his missed, late, or interrupted meal breaks.

37. Mr. Tran was never provided a 10-minute rest break for each four hours worked, or major fraction thereof. He was never compensated for missed rest breaks or adequately compensated separately for his rest breaks.

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

38. At certain times, Mr. Tran was required to perform non-service advisor-related tasks (such as meetings, moving cars, or administrative tasks) for Defendants but was never compensated separately for that time.

39. When Mr. Tran had his employment terminated by Defendants, Defendants failed to pay all earned wages (including overtime compensation, wages for off-the-clock work, premium pay for missed meal and rest breaks, separate pay for the rest breaks of commission employees, and separate pay for non-commission-earning related tasks) within 72 hours of resignation in violation of Labor Code sections 201, 202, 203, and 206.

40. Defendants failed to pay Mr. Tran all earned wages (including overtime compensation, wages for off-the-clock work, premium pay for missed meal and rest breaks, separate pay for the rest breaks of commission employees and for time spent on non-commission-earning tasks) at least twice a month in violation of Labor Code section 204.

41. Defendants failed to provide accurate, itemized statements of hours worked, wages, and deductions in violation of Wage Order Paragraph 7 and Labor Code section 226 to Mr. Tran. As described above, not all hours worked were documented on employees' wage statements. Additionally, the wage statements did not reflect premium pay owed to the employees for missed meal and rest breaks.

42. Mr. Tran was required to use his personal cell phone for work matters, so that he could be reached and recalled back to work on the rare occasion in which he was able to get something to eat while at work.

SOULINTHONG "BAY" SOUNGPANYA

43. Plaintiff Soulinthong "Bay" Soungpanya was employed by Defendants at Wise Nissan of Vallejo in Vallejo, California as a service advisor and service manager from on or about February 2017 to December 2018 (he was a service manager his last six months and a service advisor the rest of the time), at Wise Kia of Vacaville in Vacaville, California as a service manager from on or about December 2018 to June 2019, and at Wise Nissan of Vacaville from on or about June 2019 to March 2020 as a service advisor. While Mr.

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

Soungpanya supervised employees as a service manager, he had no supervisory responsibilities as a service advisor.

44. When Mr. Soungpanya was a service advisor for Defendants, he was paid on a draw plus commission basis but was a non-exempt employee (with the possible exception for overtime purposes). During that time, Mr. Soungpanya was paid strictly on a commission basis with no hourly wage element and was not adequately paid separately for rest periods or for time spent performing non-sales-related duties.

45. As a service advisor, Mr. Soungpanya generally often worked very long hours—e.g., ten to eleven hours a day, five days a week. He frequently worked more than eight hours a day and more than 40 hours per week.

46. There were work weeks in which Mr. Soungpanya did not earn sufficient commissions to qualify for the commissioned sales overtime exemption of Paragraph 3(D) of the Wage Orders. That is, during certain work weeks his total compensation did not exceed one and a half times the minimum wage. Mr. Soungpanya was never paid for overtime as a service advisor.

47. Mr. Soungpanya was generally not provided a 30-minute, off-duty meal break within his first five hours of work. He was never paid premium pay for his missed, late, or interrupted meal breaks.

48. Mr. Soungpanya was generally not provided a 10-minute rest break for each four hours worked, or major fraction thereof. He was never compensated for missed rest breaks or adequately compensated separately for his rest breaks.

49. At certain times when Mr. Soungpanya was a service advisor for Defendants, Mr. Soungpanya was required to perform non-service advisor-related tasks (such as meetings, moving cars, or administrative tasks) for Defendants but was never compensated separately for that time.

50. When Mr. Soungpanya had his employment terminated by Defendants, Defendants failed to pay all earned wages (including overtime compensation, wages for off-the-

clock work, premium pay for missed meal and rest breaks, separate pay for the rest breaks of commission employees, and separate pay for non-commission-earning related tasks) within 72 hours of resignation in violation of Labor Code sections 201, 202, 203, and 206.

51. Defendants failed to pay Mr. Soungpanya all earned wages (including overtime compensation, wages for off-the-clock work, premium pay for missed meal and rest breaks, separate pay for the rest breaks of commission employees and for time spent on non-commission-earning tasks) at least twice a month in violation of Labor Code section 204.

52. Defendants failed to provide accurate, itemized statements of hours worked, wages, and deductions in violation of Wage Order Paragraph 7 and Labor Code section 226 to Mr. Soungpanya. As described above, not all hours worked were documented on employees' wage statements. Additionally, the wage statements did not reflect premium pay owed to the employees for missed meal and rest breaks.

53. While Mr. Soungpanya was employed by Defendants, he was required to use his personal cell phone for work matters, including so that he could be reached and recalled to work on the rare occasion in which he was able to get something to eat while at work.

V. CLASS ALLEGATIONS

54. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all similarly situated employees pursuant to Code of Civil Procedure § 382. The proposed Class is comprised of all non-exempt and overtime exempt employees (including service advisors and salespeople who *may* be exempt from overtime pay requirements, pursuant to the Wage Orders but are *not* exempt from any of the other Labor Code protections addressed herein, such as meal and rest break requirements) employed at any of Defendants' Dealerships in California within the Class Period ("Class Members" or "the Class"). Plaintiffs reserves the right to name additional class representatives and to identify subclasses as necessary and appropriate.

55. The Class Period is defined as the period commencing on the date that is within four (4) years prior to the filing of this complaint and ending at the time this action proceeds to final judgment or settles (the "Class Period").

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

56. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint. Defendants, their subsidiaries, their officers, directors, managing agents and members of those persons' immediate families, the Court, Court personnel, and legal representatives, heirs, successors or assigns of any excluded person or entity are excluded from the Class.

57. **Numerosity.** The Class for whose benefit this action is brought is so numerous that joinder of all Class Members is impracticable. While Plaintiffs do not presently know the exact number of Class Members, Plaintiffs are informed and believe that there are over 1,000 Class Members, and that those Class Members can be readily determined and identified through Defendants' files and, if necessary, appropriate discovery.

58. **Typicality.** Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs, like all Class Members, were victims of wage theft by Defendants resulting from the same customs, practices, and policies. Furthermore, the factual bases of Defendants' misconduct are common to all Class Members and represent a common thread of unfair and/or unlawful conduct resulting in injury to all members of the Class.

59. **Commonality.** Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members. Issues of law and fact common to the Class include:

(a) Whether Defendants are joint employers of the Class Members;

(b) Whether Defendants are the alter ego of one another;

(c) Whether Defendants constitute a single enterprise;

(d) Whether Defendants had a common policy of zero tolerance for premium pay;

(e) Whether Defendants violated the California Labor Code by failing to provide Class Members with timely meal breaks;

(f) Whether Defendants violated the California Labor Code by failing to provide Class Members with timely rest breaks;

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

(g) Whether Defendants violated the California Labor Code by failing to pay Class Members premium pay for non-provided or untimely provided meal breaks or for non-provided rest breaks;

(h) Whether Defendants violated the California Labor Code by failing to pay overtime;

(i) Whether Defendants violated the California Labor Code by failing to pay for all time worked;

(j) Whether Defendants' commissioned service advisors and salespersons are exempt from overtime requirements;

(k) Whether Defendants' compensation policy for commissioned service advisors and salespeople or other commissioned employees violates *Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal. App. 5th 98 by not adequately compensating those employees separately for rest periods or for time spent on non-commission-earning activities;

(l) Whether Defendants violated the California Labor Code by failing to pay all earned wages at the time of Class Members' termination or within 72 hours of their resignation;

(m) Whether Defendants violated the California Labor Code by failing to pay Class Members all earned wages for the pay period in which the work was done;

(n) Whether Defendants violated the California Labor Code by failing to keep accurate records of the time worked by Class Members and by failing to provide accurate itemized statements of earnings;

(o) Whether Defendants by way of the conduct alleged herein, engaged in unfair acts or practices in violation of California unfair competition practices laws including, but not limited to, California Business & Professions Code § 17200 *et seq*., for which Class Members are entitled to recover;

(p) Whether Defendants failed to reimburse Class Members for requiring them to use their personal cell phones for business purposes;

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

(q) Whether Class Members have been damaged by Defendants' actions or conduct; and

(r) Whether declaratory and injunctive relief are appropriate to curtail Defendants' conduct as alleged herein.

60. **Adequacy.** Plaintiffs will fairly and adequately represent the interests of the Class and have no interests adverse to or in conflict with other Class Members. Plaintiffs' retained counsel will vigorously prosecute this case, have previously been designated class counsel in cases in the State and Federal courts of California, and are highly experienced in employment law, wage and hour and PAGA claims, and class and complex multi-party litigation.

61. **Superiority.** A class action is superior to other available methods for the fair and efficient adjudication of this controversy since, among other things, joinder of all Class Members is impracticable and a class action will reduce the risk of inconsistent adjudications or repeated litigation on the same conduct. Further, the expense and burden of individual lawsuits would make it virtually impossible for Class Members, Defendants, or the Court to cost-effectively redress separately the unlawful conduct alleged. Thus, absent a class action, Defendants would unjustly retain the benefits of their wrongdoings. Plaintiffs know of no difficulties to be encountered in the management of this action that would preclude its maintenance as a class action, either with or without sub-classes.

62. Adequate notice can be given to Class Members directly using information maintained in Defendants' records, or through notice by publication.

63. Accordingly, class certification is appropriate under Code of Civil Procedure § 382.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS
Wage Orders ¶ 11; California Labor Code §§ 226.7, 512
(Plaintiffs Against All Defendants)

64. Plaintiffs incorporate by reference the above allegations as if fully set forth herein, and further alleges as follows:

65. California Labor Code § 512 provides, in pertinent part, as follows:

> An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

66. Cal. Labor Code § 226.7(a) provides: "An employer shall not require an employee to work during any meal . . . period mandated pursuant to an . . . order of the Industrial Welfare Commission."

67. Paragraph 11(A) of the Wage Orders provides, in pertinent part, as follows: "Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

68. As alleged herein, Plaintiffs and Class Members routinely and uniformly were not provided with meal periods at all or in a timely-fashion and instead were required to forego the meal periods required to be provided to them.

69. By failing to provide Plaintiffs and Class Members with these meal periods, Defendants, and each of them, violated California Labor Code sections 512 and 226.7, as well as applicable provisions of the Wage Orders.

70. As a result of the unlawful acts of Defendants set forth herein, Plaintiffs and each Class Member has been unfairly and illegally deprived of up to two meal periods per day and are entitled to one additional hour of premium pay for each missed meal period.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS
Wage Orders ¶ 12; California Labor Code §§ 226.7, 512
(Plaintiffs Against All Defendants)

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

71. Plaintiffs incorporate by reference the above allegations as if fully set forth herein, and further alleges as follows:

72. Paragraph 12(A) of the Wage Orders authorizes employees to take paid rest periods based on the total hours worked daily at the rate of ten minutes rest per four hours or major fraction thereof. It provides that rest periods "shall be counted as hours worked for which there shall be no deduction from wages."

73. Cal. Labor Code § 226.7(a) provides: "An employer shall not require an employee to work during any . . . rest or recovery period mandated pursuant to an . . . order of the Industrial Welfare Commission."

74. Plaintiffs and Class Members routinely and uniformly were not provided with the rest periods required to be provided to them, which amounted to a total of two to three rest periods per day, depending upon the actual length of their workday.

75. By failing to provide Plaintiffs and Class Members with these rest periods, Defendants, and each of them, violated Paragraph 12 of the Wage Orders and California Labor Code section 226.7.

76. In addition, on the rare occasions when commissioned employees were able to take rest periods, they were not adequately separately compensated for those rest periods as required by the Wage Orders.

77. As a result of the unlawful acts of Defendants set forth herein, Plaintiffs and Class Members have been unfairly and illegally deprived of up to three rest periods per day and are entitled to one additional hour of premium pay for each missed rest period.

THIRD CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
Wage Orders ¶ 3**;** Cal. Labor Code §§ 510, 1194 *et seq*., 1198
(Plaintiffs Against All Defendants)

78. Plaintiffs incorporate by reference the above allegations as if fully set forth herein and further alleges as follows:

79. California Labor Code § 510(a) provides, in pertinent part, as follows:

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

> 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 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. 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.

80. California Labor Code § 1194 provides, in pertinent part, as follows:

> [A]ny employee receiving less than the . . . legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this . . . overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

81. Paragraph 3(A) of the Wage Orders provides, in pertinent part, as follows:

> [E]mployees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:
>
> * * *
>
> (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

82. During certain work weeks, Plaintiffs and Class Members who were commission employees did not qualify for the commissioned sales overtime exemption under the above-quoted provisions. For any work week in which that was the case, all such employees should have been treated by Defendants as non-exempt and paid overtime compensation.

83. Plaintiffs and Class Members did not receive proper compensation for all hours worked in excess of eight (or twelve) hours per day or forty hours per week, or for working more than six days in a work week, in part because Defendants deducted time for meal breaks which were not provided.

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

84. By their conduct described above, Defendants, and each of them, violated, *inter alia*, the provisions of California Labor Code §§ 510, 1194, 1198, and Paragraph 3 of the Wage Orders and are therefore liable to Plaintiffs and Class Members for the damages caused.

85. As a result of the wrongful and unlawful acts of Defendants alleged herein, Plaintiffs and Class Members have been deprived of overtime compensation in amounts to be determined and are entitled to recover said amounts according to proof, interest thereon, injunctive relief, and attorneys' fees and costs.

FOURTH CAUSE OF ACTION
FAILURE TO PAY FOR ALL HOURS WORKED
Wage Orders, ¶¶ 4(B), 11; California Labor Code §§ 221, 223
(Plaintiffs Against All Defendants)

86. Plaintiffs incorporate by reference the above allegations as if fully set forth herein, and further alleges as follows:

87. Paragraph 4(B) of the Wage Orders provides that all employers must "pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

88. As described above, Defendants failed to compensate commission employees separately for the time they spent performing non-commission-earning work and did not pay commission employees separately for rest breaks as required by law.

89. In addition, on information and belief, Defendants suffered and permitted employees to work off the clock without compensation, including for time employees were required to indicate on their time records that they were on meal breaks when they were not.

90. By their conduct described above, Defendants, and each of them, violated, *inter alia*, Paragraph 4(B) and 11 of the Wage Orders and are therefore liable to Plaintiffs and Class Members for the damages caused.

91. As a result of the wrongful and unlawful acts of Defendants alleged herein, Plaintiffs and Class Members have been deprived of regular and/or overtime compensation in

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

amounts to be determined, and are entitled to recover said amounts according to proof, interest thereon, injunctive relief, and attorneys' fees and costs.

FIFTH CAUSE OF ACTION
FAILURE TO TIMELY PAY ALL EARNED WAGES
California Labor Code § 204
(Plaintiffs Against All Defendants)

92. Plaintiffs incorporate by reference the above allegations as if fully set forth herein, and further alleges as follows:

93. California Labor Code § 204 provides, in pertinent part, as follows: "All wages . . . earned by any person in any employment are due and payable twice during each calendar month. . ."

94. As alleged herein, Defendants knowingly and intentionally failed to provide Plaintiffs and Class Members with premium pay for all missed and untimely meal and rest breaks, overtime, and payment for all hours worked within the time frame mandated by the California Labor Code and thus violated Labor Code § 204.

SIXTH CAUSE OF ACTION
WAITING TIME PAY
California Labor Code §§ 201-203, 206, 558.1
(Plaintiffs Against All Defendants)

95. Plaintiffs incorporates by reference the above allegations as if fully set forth herein, and further alleges as follows:

96. California Labor Code § 201(a) provides, in pertinent part, as follows: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

97. California Labor Code § 202(a) provides, in pertinent part, as follows:

> If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

98. California Labor Code § 206(a) provides, in pertinent part, as follows:

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

> In case of a dispute over wages, the employer shall pay, without condition, and within the time set by this article, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to as to any balance claimed.

99. California Labor Code § 203(a) states:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

100. Where an employer willfully fails to pay, without abatement or reduction, in accordance with sections 201 through 203 of the California Labor Code, all wages due to an employee who has been discharged or has quit, California Labor Code section 203 entitles the affected employee to receive from the employer a penalty of up to 30 days wages calculated from the due date of the wages until the time an action to recover the wages is commenced.

101. As alleged herein, Defendants, and each of them, have failed to pay earned wages (including but not limited to overtime compensation, premium pay for missed meal and rest breaks, and uncompensated time) to Plaintiffs and Class Members who are former employees at the time they became due and payable, and have thus violated sections 201, 202 and 206 of the California Labor Code.

102. Defendants' failure to pay wages as alleged herein was willful in that Defendants knew that Plaintiffs and Class Members were not receiving all of their earned compensation because, *inter alia*, Defendants knowingly failed to provide Plaintiffs and Class Members with meal and rest breaks and knowingly failed to pay premium pay for those missed meal and rest breaks, failed to pay premium wages and overtime owed for all hours worked, and did not fully, fairly, and properly compensate Plaintiffs and Class Members for said break periods.

103. It has been more than 30 days since the date of termination of Plaintiffs' employment.

104. As a result of Defendants' willful and unlawful acts discussed herein, Plaintiffs and Class Members who are no longer employed by Defendants are each entitled to recover,

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

pursuant to California Labor Code § 203, continuing wages as a penalty for a total of up to 30 days depending on date of termination of their employment.

SEVENTH CAUSE OF ACTION

STATUTORY PENALTIES FOR VIOLATION OF WAGE STATEMENT AND RECORD KEEPING REQUIREMENTS

California Labor Code §§ 226, 226.3, 558.1; Wage Orders ¶ 7

(Plaintiffs Against All Defendants)

105. Plaintiffs incorporate by reference the above allegations as if fully set forth herein, and further alleges as follows:

106. California Labor Code § 226(a) provides, in pertinent part, as follows:

> Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing . . . gross wages earned, . . . total hours worked by the employee . . . all deductions . . . and . . . all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

107. Paragraph 7 of the Wage Orders provides additionally, in pertinent part, as follows:

> Every employer shall keep accurate information with respect to each employee including the following:
>
> * * *
>
> (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. …
>
> (5) Total hours worked in the payroll period and applicable rates of pay.
>
> * * *
>
> Every employer shall semimonthly or at the time of each payment of wages furnish each employee … an itemized statement in writing showing: (1) all deductions…

108. Defendants, and each of them, have violated the above Labor Code section and the Wage Orders with respect to Plaintiffs and Class Members by failing to keep accurate time

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

records showing all hours worked and failing to provide accurate itemized statements of earnings and the amounts lawfully deducted from wages.

109. California Labor Code § 226(e)(1) provides as follows:

> An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees.

110. California Labor Code § 226(e)(2)(B) provides that "[a]n employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by … subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone" the amount of gross wages or net wages paid, the total hours worked, all deductions, and/or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

111. California Labor Code § 226(h) provides, in pertinent part, as follows: "An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees."

112. In addition, California Labor Code § 226.3 further provides that an employer who violates § 226(a) "shall be subject to a civil penalty in the amount of two hundred and fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation . . . The civil penalties provided for in this section are in addition to any other penalty provided by law."

113. Defendants' violations of the Labor Code section and the Wage Orders recited above have been knowing and intentional. Among other things, Defendants knew that Plaintiffs and Class Members were not receiving meal and rest breaks but never paid them premium pay for those missed, late, or interrupted breaks.

114. As a result of the aforesaid wrongful and illegal conduct of Defendants, Plaintiffs and each Class Member herein is entitled to penalties against Defendants equal to $50 for the initial pay period for each violation by Defendants and $100 for each such violation in every

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

subsequent pay period as well as additional penalties under Labor Code § 226.3 during the relevant limitations period.

115. As a result of the aforesaid wrongful and illegal conduct of Defendants, Plaintiffs and the Class are also entitled to injunctive relief, costs and attorneys' fees.

EIGHTH CAUSE OF ACTION
FAILURE TO INDEMNIFY EMPLOYEES FOR NECESSARY EXPENDITURES INCURRED IN DISCHARGE OF DUTIES
Cal. Labor Code § 2802
(Plaintiffs Against All Defendants)

116. Plaintiffs incorporates by reference the above allegations as if fully set forth herein, and further alleges as follows:

117. California Labor Code § 2802(a) provides, in pertinent part, as follows: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

118. Plaintiffs and Class Members were required to use personal cell phones to make work-related calls and were not reimbursed for such cell phone use.

119. As a proximate result of Defendants' unlawful actions and omissions, Plaintiffs and Class Members have been damaged in an amount according to proof at trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to Labor Code § 2802(b). Additionally, Plaintiffs and Class Members are entitled to all available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided in Labor Code § 2802(c), as well as other available remedies.

NINTH CAUSE OF ACTION
VIOLATION OF UCL
Cal. Bus. & Prof. Code §§ 17200 *et seq.*
(Plaintiffs Against All Defendants)

120. Plaintiffs incorporate by reference the above allegations as if fully set forth herein, and further alleges as follows:

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

121. By their actions described in this Complaint, Defendants, and each of them, have committed unfair, unlawful and/or fraudulent business practices in violation of California Business & Professions Code section 17200 *et seq.* (the "UCL").

122. California Labor Code § 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in order to ensure that employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those employers who try to gain competitive advantage by not so complying, at the expense of the health, safety and welfare of their employees.

123. As set forth above, Defendants, and each of them, have failed and refused to provide timely, off-duty meal periods to their employees; failed and refused to provide rest breaks; failed and refused to compensate employees for such missed or untimely breaks; failed to properly pay employees for all hours worked; failed to properly pay overtime; failed to pay commission employees separately for their rest breaks; failed to timely pay all wages earned at the time of termination; and failed to reimburse employees for use of their personal cell phones. As a result of these actions, Defendants have engaged in unfair competition within the meaning of the UCL because their conduct has violated state wage and hour laws and policies, including but not limited to Labor Code sections 201, 202, 206, 221, 223, 226, 226.7, 510, 512, 558, 1194 *et seq.*, 1198, 2802, and Paragraphs 3, 4, 7, 9, 11, and 12 of the Wage Orders.

124. In addition, it has been Defendants' custom, policy and practice to fail and refuse to pay Plaintiffs and Class Members all earned wages at the time such wages became due and payable. Specifically, Defendants, and each of them, have failed to timely pay earned wages (*e.g.*, overtime compensation and premium pay for missed or untimely meal breaks and for missed rest breaks) as required by Labor Code section 204. This conduct likewise constitutes unfair competition.

125. Defendants' conduct as described herein has been anti-competitive and injurious to Defendants' competitors who complied with the laws and policies violated by Defendants, as Defendants' conduct provided an unfair and illegal advantage in the marketplace as a result of, *inter alia*, paying less for the labor of their employees than required by law.

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

126. The foregoing conduct by Defendants, and each of them, has injured Plaintiffs and each Class Member by, *inter alia*, wrongfully denying them earned wages, overtime pay, and premium pay. As such, Plaintiffs and Class Members are entitled to restitution and injunctive relief.

<u>TENTH CAUSE OF ACTION</u>
CIVIL PENALTIES – PAGA
Labor Code §§ 226.3, 558, 558.1, and 2698; Wage Orders ¶ 9
(By Plaintiff Tran against All Defendants on behalf of himself, the State of California and all other aggrieved employees)

127. Plaintiff Tran re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

128. California Labor Code § 2699 provides in pertinent part, as follows:

> (a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees…
>
> * * *
>
> (c) For purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.
>
> * * *
>
> (f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:
>
> * * *
>
> (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.
>
> * * *

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

(g)(1) … Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

129. California Labor Code § 558 provides in pertinent part, as follows:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. . .

*   *   *

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

130. Plaintiff Tran is an aggrieved employee. He was employed by Defendants, and each of them, and the violations alleged herein were committed against him. Plaintiff Tran brings this action on behalf of himself, the State of California, and all other current and former aggrieved employees. Aggrieved employees include Class Members and all others who suffered at least one violation of the Labor Code.

131. At the time of each violation, Defendants employed one or more employees.

132. At all times, Defendants established and controlled employees' scheduling, rest breaks, meal breaks, premium pay, payment for all hours worked, overtime, wage statements, waiting time pay, and record keeping practices and policies. Defendants caused the violations alleged in this Complaint, including of California Labor Code. §§ 201, 202, 203, 204, 206, 221, 223, 224, 226, 226.7, 510, 512, 1194 *et seq.*, 1198, 2802, and are liable for civil penalties under Labor Code §§ 2699, 226.3, and 558.

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

133. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each of them, Plaintiff Tran and the aggrieved employees are entitled to civil penalties in an amount to be determined at trial, pre-judgment interest, costs and attorneys' fees.

134. Plaintiff Tran has complied with all procedural requirements of Labor Code § 2699.3 prior to filing this Complaint. By letter dated October 30, 2020, submitted through the Labor and Workforce Development Agency ("LWDA") portal and sent by certified mail, Plaintiff Tran through his counsel notified the LWDA and Defendants of the specific provisions of the Labor Code that Defendants have violated. The LWDA did not respond to his notice of the alleged violations within the statutory timeframe, 60 calendar days of the postmark date of the notice letter, and Plaintiff Tran has therefore exhausted his administrative remedies. Pursuant to Labor Code § 2699.3, he is permitted to pursue his PAGA claims in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment in their favor and relief against Defendants, and each of them, as follows:

(a) For injunctive relief restraining further acts of wrongdoing by Defendants;

(b) For compensatory damages for Plaintiffs and the Class, including, without limitation, lost wages and premium pay, in an amount to be determined at trial, but at least $4 million;

(c) For reimbursement of all necessary expenditures, plus interest thereon pursuant to Labor Code § 2802(b);

(d) For statutory penalties;

(e) For interest, at the legal rate;

(f) For restitution of all amounts Class Members have been unlawfully denied as a result of Defendants' unfair and unlawful business practices;

(g) For civil penalties under PAGA in an amount to be determined at trial, but at least the jurisdictional amount of this court;

(h) For pre-judgment interest, at the legal rate;

(i) For attorneys' fees and costs; and

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900

For all such other and further relief as the Court may deem just, proper and equitable.

Dated: January 6, 2021

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

By:__________________________

Nicholas A. Carlin
Brian S. Conlon
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiffs hereby request a trial by jury of all issues so triable.

Dated: January 6, 2021

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

By:__________________________

Nicholas A. Carlin
Brian S. Conlon
Attorneys for Plaintiff

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
(415) 398-0900