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Attorneys for Plaintiffs
Alfredo Alvarez and Maria Robles

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ALFREDO ALVAREZ, on behalf of
himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*,

Plaintiffs

v.

DAVALAN SALES, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE No. 20STCV17792

*Assigned for All Purposes to Judge Robert B.
Broadbelt, Dept. 53*

UNLIMITED JURISDICTION

**DECLARATION OF EVAN S. GAINES IN
SUPPORT OF STIPULATION AND
[PROPOSED] ORDER APPROVING
SETTLEMENT OF CLAIMS,
PERMITTING PLAINTIFF LEAVE TO
FILE A FIRST AMENDED COMPLAINT,
AND DISMISSING ACTION WITH
PREJUDICE**

Complaint Filed: May 11, 2020

1
2 I, EVAN S. GAINES, hereby declare and state as follows:

3 1. I am an attorney at law duly licensed to practice before all Courts in the State of
4 California and am a senior associate at the law firm of Gaines & Gaines, APLC, attorneys of record
5 for Plaintiffs Alfredo Alvarez and Maria Robles (hereinafter "Plaintiffs") in the above-captioned
6 action. I have personal knowledge of the matters set forth herein, and if called upon as a witness
7 to testify thereto, I could and would competently do so.

8 2. My firm has represented employees in complex employment matters such as this
9 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
10 Court-approved class counsel in dozens of class action matters since my admission to the Bar. A
11 true and correct list of the cases in which our law firm has represented employees in wage and hour
12 matters been appointed as class counsel is attached hereto as Exhibit "C".

13 3. Plaintiff Alvarez filed this representative action, pursuant to the Labor Code § 2698
14 *et seq.*, the Labor Code Private Attorneys General Act (hereinafter, "PAGA") on May 11, 2020.
15 Prior thereto, Plaintiff Alvarez complied with the administrative requirements set forth in PAGA
16 on March 5, 2020. Attached hereto as Exhibit "A" is a true and correct copy of Plaintiff Alvarez's
17 March 5, 2020 letter to the California Labor and Workforce Development Agency.

18 4. After commencing the Action, the parties conducted informal discovery through
19 which they ascertained the size of the aggrieved employee group and the number of pay periods
20 worked by them during the applicable statutory period to ascertain the total value of Plaintiffs'
21 representative claims.

22 5. The parties thereafter engaged in arm's-length negotiations through private
23 mediation and reached a resolution of the PAGA claims asserted in both PAGA notice letters and
24 in the First Amended Complaint (which they seek leave to file through this stipulation and order).
25 Based on discovery completed by my office and an analysis performed by my colleagues and I, the
26 maximum value of the penalty claims asserted for the applicable time period, without stacking
27 multiple alleged violations, is \$358,100 and the amount of the settlement is \$140,000, or 40% of
28 the maximum recoverable penalties (based on approximately 3,581 affected pay periods worked by

1 148 Aggrieved Employees at the rate of \$100 each). Based on my experience as noted above, the
2 PAGA settlement is a substantial recovery in light of the claims alleged, the risk of prevailing on
3 the merits of the claims, the risk the Court would apply its discretion to award less than the
4 maximum potential penalty award, the narrow scope of the release (only PAGA claims premised
5 on specified Labor Code violations), and the substantial payment to be made to the LWDA. This
6 is a stellar result which is by any measure fair and reasonable, thereby warranting approval by the
7 Court.

8 6. The parties have entered into a settlement agreement to resolve the PAGA claims
9 on behalf of all alleged Aggrieved Employees, defined as all current and former non-exempt
10 employees who worked at least one pay period for Defendant Davalan Sales. Inc. in California at
11 any time from March 5, 2019 through December 31, 2020 (the “Settlement Agreement and
12 Release”). Attached hereto as Exhibit “B” is a true and correct copy of the Settlement Agreement
13 and Release.

14 7. The Settlement Agreement and Release provides that upon its effective date,
15 Plaintiffs and Aggrieved Employees will fully and finally release and discharge Defendant and its
16 former, present and future owners, parents, and subsidiaries, and all of their current, former and
17 future officers, directors, members, managers, employees, consultants, partners, shareholders, joint
18 venturers, agents, successors, assigns, accountants, insurers, or legal representatives, from all
19 claims, rights, demands, liabilities and causes of action for civil penalties under the PAGA that
20 arose during the Settlement Period, based on the factual allegations pled in the letters to the LWDA
21 dated March 5, 2020 and October 6, 2020 and in the operative complaint in the Action, with respect
22 to the following claims: (a) failure to provide proper meal periods or to pay premium wages for
23 missed meal periods; (b) failure to authorize and permit rest periods or to pay premium wages for
24 missed rest periods; (c) failure to pay overtimes wages; (d) failure to pay minimum wage; (e) failure
25 to maintain accurate records; (f) failure to furnish accurate wage statements; (g) failure to timely
26 pay wages; (h) failure to reimburse for necessary expenditures; (i) failure to provide written notice
27 of wages; (j) failure to timely pay final wages; (k) failure to provide paid sick time; and (l) failure

1 to provide employment records, including any related claims for attorneys' fees and costs, resulting
2 therefrom.

3 8. As part of the procedure approving their settlement, to ensure the operative pleading
4 includes the claims alleged by Maria Robles in her October 6, 2020 PAGA letter and mirrors the
5 claims to be released through the Settlement Agreement and Release, the parties seek leave for
6 Plaintiff to file a First Amended Complaint in the form attached hereto as Exhibit "D" (with a true
7 and correct redline comparison to the original Complaint attached hereto as Exhibit "E").

8 I declare, under penalty of perjury, under the laws of the State of California, that the
9 foregoing is true and correct. Executed this 19 day of January 2020 at Calabasas, California.

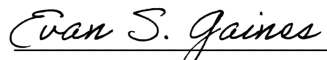
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12 EVAN S. GAINES
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EXHIBIT A

GAINES & GAINES

A PROFESSIONAL LAW CORPORATION

WWW.GAINESLAWFIRM.COM

27200 AGOURA ROAD, SUITE 101

CALABASAS, CALIFORNIA 91301

PHONE (818) 703-8985

FAX (818) 703-8984

March 5, 2020

Via Certified Mail

Labor & Workforce Development Agency
By electronic filing

Davalan Sales, Inc.
3915 Alta Vista Dr.
La Canada, CA 91011

Defendant mailed certified # 70190700000201196113

Agent for Service of Process for Davalan Sales, Inc.
Alan Frick
1601 E Olympic Blvd., Suite 325
Los Angeles, CA 90021

Agent mailed certified # 70190700000201196120

Re: ***Labor Code Violations of Davalan Sales, Inc. – Compliance Letter of California Labor Code § 2698 - Private Attorneys General Act***

Dear LWDA:

This office represents Alfredo Alvarez, a former California employee of Davalan Sales, Inc. ("Defendant"). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client worked for Defendant in Southern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and all other of its California truck drivers ("Aggrieved Employees").

Defendant failed to pay premium wages to our client and Aggrieved Employees who were denied rest breaks, in violation of Labor Code §§ 226.7 and 558 and IWC Wage Order 9-2001. Our client and Aggrieved Employees were routinely unable, and not authorized, to take a 10-minute rest break for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest break. This violates Labor Code §§ 226.7 and 558 and IWC Wage Order 9-2001.

Defendant failed to pay premium wages to our client and Aggrieved Employees who were denied meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001. Our client and all other Aggrieved Employees were routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, or a second uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours in duration, but were not paid premium wages of one hour's pay for each missed meal period. Defendant also failed to maintain required meal period records. The Wage Orders require

Labor & Workforce Development Agency
Davalan Sales, Inc.
Alan Frick
March 5, 2020
Page 2

that California employers keep “[t]ime records showing when the employee begins and end each work period, as well as meal periods” IWC Wage Order 9-2001(7)(a)(3). Additionally, Labor Code § 1174 requires employers to keep time records showing, among other things, all meal periods taken. Defendant failed to maintain these records for our client and other Aggrieved Employees. This violates Labor Code §§ 226.7, 512 and 1174 and IWC Wage Order 9-2001.

Defendant failed to issue our client and all other Aggrieved Employees accurately itemized wage statements. As Defendant failed to compensate our client and Aggrieved Employees with all wages due, as detailed above, their wage statements failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, and net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3.

Our client further alleges that Defendant paid him and other Aggrieved Employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As our client and other Aggrieved Employees of Defendant were not paid all wages due and owing throughout the course of their employment, as detailed above, at the time of their separation they were not paid all final wages due and owing for the entirety of their employment. This violates Labor Code §§ 201-202.

The \$75 PAGA filing fee has been mailed to the LWDA concurrently with the transmission of this letter.

We invite Defendant or its attorney to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.

Very truly yours,

GAINES & GAINES
A Professional Law Corporation

By :

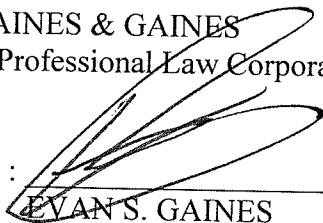

EVAN S. GAINES

EXHIBIT B

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Fax: 818.703.8984

Attorneys for Plaintiffs
Alfredo Alvarez and Maria Robles

[additional counsel on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ALFREDO ALVAREZ and MARIA ROBLES, on
behalf of themselves and all “aggrieved employees”
pursuant to Labor Code § 2698 et seq.,

Plaintiffs

v.

DAVALAN SALES, INC., a California corporation,
and DOES 1 through 10, inclusive,

Defendants.

Case No. 20STCV17792

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

1 HAIG B. KAZANDJIAN (SBN 278622)

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7 Attorneys for Plaintiffs

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8 James A. Bowles (SBN 089383)

9 Elissa L. Gysi (SBN 281338)

HILL, FARRER & BURRILL LLP

10 One California Plaza, 37th Floor

300 South Grand Ave.

11 Los Angeles, CA 90071-3147

Telephone: 213.620.0460

12 Fax: 213.624.4840

13 Attorneys for Defendant

Davalan Sales, Inc.

This Settlement Agreement and Release of Claims (“Agreement”) is between Plaintiffs Alfredo Alvarez and Maria Robles (“Plaintiffs”), on behalf of themselves and other aggrieved employees, and Defendant Davalan Sales, Inc. (“Defendant” or “Defendant”) (collectively, with Plaintiffs, the “Parties”). By executing this Agreement, the Parties intend to settle the lawsuit entitled *Alvarez, et al. v. Davalan Sales, Inc.*, Case No. 20STCV17792 (Los Angeles County Superior Court, filed May 11, 2020) (the “Action”) involving claims brought under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”).

I. DEFINITIONS

1. “**Administration Fees**” refers to the amount to be paid to Simpluris, Inc. (or any other third-party settlement administrator approved by the Parties (“Settlement Administrator”)) for costs associated with administration of the settlement contemplated by this Agreement, including costs for, among other things, printing, copying, formatting, translation of materials, postage, envelopes, computer searches to locate addresses, calculation of payments to individual class members, calculation of applicable withholdings and taxes (if required by law), costs associated with the process for any uncashed settlement checks, and any other expenses the Settlement Administrator incurs to complete the settlement process according to the terms of this Agreement. The Settlement Administrator will be responsible for establishing a qualified settlement account, and issuing all payments and appropriate tax forms (if required by law). The Parties agree that Administration Fees will not exceed \$5,000, all of which are to be taken from the PAGA Gross Settlement Amount (as defined below).

2. “**Aggrieved Employees**” consists of all current and former non-exempt employees who worked at least one pay period for Davalan in California at any time from March 5, 2019 through December 31, 2020.

3. “**Attorneys’ Fees and Costs**” means the amount of money to be paid from the PAGA Gross Settlement Amount (as defined below) to Gaines & Gaines, APLC and Haig B. Kazandjian Lawyers, APC (together, “Plaintiffs’ Counsel”) in full satisfaction of all claims Plaintiffs may have for reasonable attorneys’ fees, litigation costs, and expenses incurred in the Action. The amount of attorneys’ fees awarded to Plaintiffs’ Counsel may not exceed 40% of the

1 PAGA Gross Settlement Amount, and the amount of litigation costs and expenses (combined)
2 may not exceed \$12,000. Defendant will not object to or otherwise oppose requests consistent
3 with this paragraph.

4 4. **“Effective Date”** shall be the date on which the Court approves this Agreement and
5 dismisses the Action with prejudice through entry of the Order (as defined herein). No money
6 will be distributed unless and until the Effective Date occurs.

7 5. **“Individual Settlement Payments to Aggrieved Employees”** means the individual
8 payments that shall be made to each Aggrieved Employee under this Agreement, which in the
9 aggregate shall total 25% of the PAGA Net Settlement Amount (as defined below).

10 6. **“PAGA Gross Settlement Amount”** means One Hundred Forty Thousand Dollars
11 (\$140,000). This amount shall be used to satisfy all liabilities arising from this Agreement,
12 including Attorneys’ Fees and Costs, Plaintiffs’ Individual Claim Payments (as defined below),
13 Individual Settlement Payments to Aggrieved Employees, Administration Fees, and payment to
14 the Labor and Workforce Development Agency (“LWDA”). Defendant shall pay exactly the
15 PAGA Gross Settlement Amount to fulfill all of its obligations under this settlement.

16 7. **“PAGA Net Settlement Amount”** means the amount, as approved by the Court,
17 after Attorneys’ Fees and Costs, Plaintiffs’ Individual Claim Payments, and Administration Fees
18 are subtracted from the PAGA Gross Settlement Amount.

19 8. **“Plaintiffs’ Individual Claim Payments”** means the amounts to be paid to
20 Plaintiffs Alvarez and Robles in consideration for their general release of all claims, as set forth in
21 Paragraph 22 below. Plaintiffs’ Individual Claim Payments shall be in addition to the amount
22 payable to Plaintiffs as the Individual Settlement Payments to Aggrieved Employees. Plaintiffs’
23 Individual Claim Payments shall not exceed \$5,000 each. Plaintiffs will receive IRS Forms 1099
24 from the Settlement Administrator and will be solely responsible for reporting and paying all
25 applicable federal, state and local tax. Defendant will not object to or otherwise oppose requests
26 consistent with this paragraph.

27 9. **“Settlement Period”** means March 5, 2019 through December 31, 2020.
28

II. RECITALS AND PROCEDURAL HISTORY

10. **Allegations in the Complaint and Amendment Thereto.** On May 11, 2020, Plaintiff Alvarez filed the Action in the Superior Court of California, County of Los Angeles, individually and on behalf of all “aggrieved employees” pursuant to Labor Code §§ 2698 *et seq.* As part of this Agreement, Plaintiffs shall file a First Amended Complaint, in the form attached hereto as Exhibit B, which alleges all claims set forth by Plaintiff Alvarez and Plaintiff Robles in their notice letters to the LWDA. In the Complaint and First Amended Complaint, Plaintiffs allege a single claim for penalties under PAGA.

11. **Defendant’s Denials.** Nothing in this Agreement, or in the Memorandum of Understanding executed by the Parties at mediation, shall constitute an admission on behalf of Defendant of any form of liability or the accuracy of any allegation against it. Defendant denies (1) all the material allegations in the Action; (2) that it violated any applicable laws; and (3) that it is liable for damages, penalties, attorneys’ fees, costs, or any other form of compensation or remedy with respect to the claims asserted in the Action. Nevertheless, without admitting any liability or wrongdoing, Defendant has agreed to settle the Action on the terms set forth in this Agreement to avoid the burden, expense, and uncertainty of litigation. Any statements by Defendant in this Agreement are made for settlement purposes only.

12. **Counsel’s Investigation.** Plaintiffs’ Counsel has investigated the facts relating to the claims alleged in the Action and also has analyzed all defenses. Plaintiffs’ Counsel also engaged in informal discovery and obtained the production of relevant documentation and data from Defendant prior to mediation on December 16, 2020, to allow Plaintiffs’ Counsel to further investigate and evaluate the claims and defenses in this Action.

13. **Negotiation of Settlement.** Plaintiffs’ Counsel engaged in arms-length negotiations with Defendant at a mediation on December 16, 2020, with experienced mediator Steve Pearl with a view toward achieving substantial benefits for the Aggrieved Employees and the State of California, while avoiding the cost, delay, and uncertainty of further litigation.

1 **III. TERMS OF THE AGREEMENT**

2 **14. Court Approval of the Settlement.** The Parties will present this Agreement to the
3 Court and will request that the Court issue an order approving and incorporating by reference the
4 terms and conditions of this Agreement and dismissing the Action with prejudice (the “Order”).
5 Plaintiffs’ Counsel will be responsible for drafting and filing all documents necessary to obtain the
6 Order.

7 **15. Delivery of the List of Aggrieved Employees.** As soon as practicable, but no later
8 than 15 business days after the Effective Date, Defendant will provide the Settlement
9 Administrator with a confidential list containing the Aggrieved Employees’ names, last known
10 addresses, last known telephone numbers, and social security numbers, which will be used to send
11 the Individual Settlement Payments to Aggrieved Employees. Defendant will also provide the
12 Settlement Administrator with the number and date ranges of the pay periods worked by each
13 Aggrieved Employee during the Settlement Period. Data provided by Defendant shall be kept
14 confidential by the Settlement Administrator except for purposes of administering the settlement.
15 The Settlement Administrator shall not share any personally-identifying Aggrieved Employee data
16 with Plaintiffs’ Counsel, but may disclose the number of Aggrieved Employees, the date ranges of
17 the pay periods worked by each Aggrieved Employee during the Settlement Period (with names
18 redacted), and their Individual Settlement Payments (with names redacted).

19 **16. Funding of the Settlement.** Within 30 calendar days after the Effective Date,
20 Defendant will deposit the PAGA Gross Settlement Amount into a Qualified Settlement Account
21 (“QSA”) to be established by the Settlement Administrator.

22 **17. Settlement Payments.** Within 21 calendar days of the funding of the QSA, the
23 Settlement Administrator shall issue the following payments from the QSA: (a) the Individual
24 Settlement Payments to Aggrieved Employees (including Plaintiffs); (b) the LWDA PAGA
25 Payment (as defined below) to the LWDA; (c) Plaintiffs’ Individual Claim Payment to Plaintiffs;
26 (d) Attorney’s Fees and Costs to Plaintiffs’ Counsel; and (e) the Administration Fees to itself. The
27 Settlement Administrator, and not Defendant, will issue appropriate tax forms for all payments
28 issued under this Settlement, if and as required by law as determined by the Settlement

1 Administrator. Because the payments made under this Agreement will be made with respect to
2 only the PAGA claims for all Aggrieved Employees and the individual claims for Plaintiffs, this
3 Agreement is not subject to the rules governing the settlement of class or collective actions.
4 Accordingly, the settlement payments shall be distributed without a claims process or an
5 opportunity to object or opt out.

6 **18. Calculation of Individual Settlement Payments to Aggrieved Employees.** The
7 PAGA Net Settlement Amount will be distributed as follows:

8 a. 75% of the PAGA Net Settlement Amount shall be paid to the LWDA (the
9 “LWDA PAGA Payment”); and

10 b. The remaining 25% of the PAGA Net Settlement Amount (the “Aggrieved
11 Employee Settlement Amount”) shall be distributed to all Aggrieved Employees, with each
12 Aggrieved Employee receiving an Individual Settlement Payment based on the number of pay
13 periods he or she worked for Davalan in California during the Settlement Period. The Aggrieved
14 Employee Settlement Amount will be divided by the total number of such pay periods to yield the
15 Pay Period Value. Each Aggrieved Employee shall be paid an Individual Settlement Payment
16 equal to their individual number of pay periods multiplied by the Pay Period Value.

17 **19. Distribution of Individual Settlement Payments to Aggrieved Employees.** The
18 Settlement Administrator will issue to each Aggrieved Employee a check in the amount of his or
19 her Individual Settlement Payment, along with an explanatory letter in the form attached hereto as
20 Exhibit A, within the time parameters set forth in paragraph 17 above. Checks shall remain
21 negotiable for 180 days. Any checks returned as non-deliverable on or before the check cashing
22 deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed
23 thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt
24 to determine the correct address using a skip-trace, or other search using the name, address, or
25 Social Security number of the Aggrieved Employee, and will then perform a single re-mailing.
26 Funds contained in the settlement checks that are returned as undeliverable and in settlement
27 checks uncashed for more than 180 days after issuance will be tendered to the California State
28 Controller’s Office - Unclaimed Property Fund, to be held in the name of the Aggrieved

1 Employee. All settlement payments to Aggrieved Employees will be treated as miscellaneous
2 income for which a 1099 will be issued to the extent required by law.

3 20. **Attorneys' Fees and Costs.** As referenced above, Plaintiffs' Counsel intends to
4 request, and Defendant agrees not to oppose, that the Court award Plaintiffs' Counsel, (a)
5 attorneys' fees in an amount up to 40% of the PAGA Gross Settlement Amount, and (b) costs and
6 expenses incurred in representing the interests of the Aggrieved Employees up to \$12,000. These
7 amounts shall be paid from the PAGA Gross Settlement Amount. Defendant shall have no
8 liability for any other attorneys' fees or costs. If the Court approves a lesser amount for either fees
9 or costs and expenses, this will not impact the enforceability of this Agreement and the difference
10 will remain part of the PAGA Net Settlement Amount. The Settlement Administrator shall issue
11 Plaintiffs' Counsel the Attorneys' Fees and Costs within the time parameters set forth in paragraph
12 17 above, together with Forms 1099. Plaintiffs' Counsel shall be responsible for instructing the
13 Settlement Administrator as to how the Attorneys' Fees and Costs shall be shared among them.
14 Plaintiffs' Counsel agree that they are solely responsible for paying all applicable taxes on any
15 payments they receive hereunder.

16 21. **Release of PAGA Claims.** Upon Court approval of the Settlement, dismissal of the
17 Action with prejudice, and subject to Defendant's full payment of the PAGA Gross Settlement
18 Amount, Plaintiffs, the State of California, and Aggrieved Employees will fully and finally release
19 and discharge Davalan and its former, present and future owners, parents, and subsidiaries, and all
20 of their current, former and future officers, directors, members, managers, employees, consultants,
21 partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal
22 representatives ("Released Parties"), from all claims, rights, demands, liabilities and causes of
23 action for civil penalties under the PAGA that arose during the Settlement Period, based on the
24 factual allegations pled in the letters to the LWDA dated March 5, 2020 and October 6, 2020 and
25 in the operative complaint in the Action, with respect to the following claims: (a) failure to
26 provide proper meal periods or to pay premium wages for missed meal periods; (b) failure to
27 authorize and permit rest periods or to pay premium wages for missed rest periods; (c) failure to
28 pay overtimes wages; (d) failure to pay minimum wage; (e) failure to maintain accurate records;

(f) failure to furnish accurate wage statements; (g) failure to timely pay wages; (h) failure to reimburse for necessary expenditures; (i) failure to provide written notice of wages; (j) failure to timely pay final wages; (k) failure to provide paid sick time; and (l) failure to provide employment records, including any related claims for attorneys' fees and costs, resulting therefrom.

22. **Additional Release of Claims by Plaintiffs.** In addition to the release given by each Aggrieved Employee, Plaintiffs Alvarez and Robles fully release and discharge the Released Parties from any and all claims, demands, obligations, causes of action, rights, or liabilities of any kind, known or unknown, arising out of any acts or omissions by Davalan or any of the Released Parties through the Effective Date. This release by Plaintiffs specifically includes, but is not limited to, any and all claims, demands, obligations, causes of action, rights, or liabilities under any federal, state, or local laws, statutes, or regulations (including, but not limited to, the California Labor Code, the California Fair Employment and Housing Act, Title VII of the Civil Rights Act, the Equal Pay Act, and the Fair Labor Standards Act), whether or not known or suspected to exist, and whether or not specifically or particularly described herein. Specifically, because they are releasing claims that they may not know about, Plaintiffs waive all rights and benefits afforded to them by California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY

23. **No Credit Toward Benefit Plan.** Payments to Aggrieved Employees, including Plaintiffs, as referenced herein will not be utilized to calculate any additional benefits under any benefit plans to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) or 403(b) plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Agreement will not affect any rights, contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

1 24. **Circular 230 Disclaimer.** Each Party to this Settlement Agreement acknowledges
2 and agrees that (1) no provision of this Agreement, and no written communication or disclosure
3 between or among the Parties or their attorneys or other advisors, is or was intended to be, nor will
4 any such communication or disclosure constitute or be construed or be relied upon as, tax advice
5 within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as
6 amended); (2) each Party (a) has relied exclusively upon her or its own, independent legal and tax
7 counsel for advice (including tax advice) in connection with this agreement, (b) has not entered
8 into this Agreement based upon the recommendation of any other Party or any attorney or advisor
9 to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any
10 attorney or advisor to any other Party to avoid any tax penalty that may be imposed on the Party;
11 and (3) no attorney or advisor to any other Party has imposed any limitation that protects the
12 confidentiality of any such attorney's or advisor's tax strategies (regardless of whether such
13 limitation is legally binding) upon disclosure by the Party of the tax treatment or tax structure of
14 any transaction, including any transaction contemplated by this Agreement.

15 25. **No Prior Assignment.** Plaintiffs represent and warrant that they have not assigned
16 or transferred any portion of any claims, demands, obligations, causes of action, rights, or
17 liabilities that, but for such assignment or transfer, would be released under this Agreement.

18 26. **Nullification of Settlement Agreement.** Unless otherwise noted herein, if (i) the
19 Court does not approve the settlement as provided or (ii) the settlement does not become final for
20 any other reason, then this Agreement, the Memorandum of Understanding, and any documents
21 generated to bring it into effect will be null and void, and the Parties will be returned to their
22 original, respective positions.

23 27. **No Publicity; Confidentiality.** No party hereto (including the Parties' attorneys)
24 shall publicize this settlement, this Agreement, any terms of this Agreement (including, but not
25 limited to, the PAGA Gross Settlement Amount), or any information about the negotiations
26 leading to the execution of this Agreement. This includes, but not limited to, communications
27 through any social media, unless so ordered by the Court. Nothing herein limits or purports to
28 limit Plaintiffs' Counsel's ability or right to respond to Aggrieved Employee inquiries about this

1 Settlement or to submit this Settlement to the LWDA and the Court for the purpose of obtaining
2 approval of the Settlement and in compliance with the requirements of PAGA.

3 28. **Confidential Information.** Plaintiffs' Counsel will destroy all confidential
4 documents and information provided by Defendant for mediation purposes within 60 calendar
5 days after the completion of the administration of this Agreement. Plaintiffs' Counsel agrees that
6 none of the information provided by Defendant shall be used for any purpose.

7 29. **Continued Jurisdiction.** After entry of the Order, the Court shall retain, and will
8 have continuing, jurisdiction solely for purposes of addressing: (i) the interpretation and
9 enforcement of the terms of this Agreement; (ii) settlement administration matters; and (iii) such
10 matters as may be appropriate under court rules or as set forth in this Agreement, as permitted by
11 Code of Civil Procedure section 664.6 and any other applicable law.

12 30. **Entire Agreement.** This Agreement constitutes the entirety of the Parties'
13 settlement terms. No other prior or contemporaneous written or oral agreements may be deemed
14 binding on the Parties.

15 31. **Amendment or Modification.** This Agreement may be amended or modified only
16 by a written instrument, signed by both Parties, their successors-in-interest, or their counsel.

17 32. **Authorization to Enter into a Settlement Agreement.** Counsel for all Parties
18 warrant and represent they are expressly authorized by the Parties whom they represent to
19 negotiate this Agreement and to take all appropriate action required or permitted to be taken by
20 such Parties pursuant to this Agreement. The Parties and their counsel will cooperate with each
21 other and use their best efforts to effect the implementation of the settlement.

22 33. **Binding on Successors and Assigns.** This Agreement will be binding upon, and
23 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

24 34. **Governing Law.** All terms of this Agreement shall be governed by, and interpreted
25 according to, the laws of the State of California.

26 35. **Execution and Counterparts.** This Agreement is subject only to the execution of
27 all Parties. However, the Agreement may be executed in one or more counterparts. All executed
28

1 counterparts and each of them, including fax and scanned copies of the signature page, will be
2 deemed to be one and the same instrument.

3 **36. Invalidity of any Provision.** Before declaring any provision of this Settlement
4 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
5 extent possible consistent with applicable precedents so as to define all provisions of this
6 Settlement Agreement valid and enforceable.

7 **37. Construction and Interpretation.** Headings and paragraph titles are inserted as a
8 matter of convenience and for reference, and in no way define, limit, extend or describe the scope
9 of this Agreement or any of its provisions. Each term of the Agreement is contractual.

10 **38. Waiver.** No waiver of any condition or covenant contained in this Agreement or
11 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
12 constitute a further waiver by such party of the same or any other condition, covenant, right or
13 remedy.

14 **39. Enforcement Action.** In the event that one or more of the Parties institutes any
15 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
16 Agreement or to declare rights and/or obligations under this Agreement, the successful Party will
17 be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs, including
18 expert witness fees incurred in connection with any enforcement action.

19 **40. Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms
20 and conditions of this Agreement. Accordingly, this Agreement will not be construed more
21 strictly against one party merely by virtue of the fact that it may have been prepared by counsel for
22 one of the Parties, it being recognized that, because of the arm's-length negotiations between the
23 Parties, all Parties have contributed to the preparation of this Agreement.

24 **41. Representation by Counsel.** The Parties acknowledge that they have been
25 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
26 and that this Agreement has been executed with the consent and advice of counsel, and reviewed
27 in full.
28

1 **42. Cooperation and Execution of Necessary Documents; Stipulation/Motion for**
2 **Court Approval.** All Parties will cooperate in good faith and execute all documents to the extent
3 reasonably necessary to effectuate the terms of this Agreement. Plaintiffs' Counsel shall prepare
4 and file a joint stipulation for Court approval of the Settlement (or a motion if required by the
5 Court) as soon as practicable. Plaintiffs' Counsel shall submit the stipulation/motion to
6 Defendant's counsel for approval a reasonable time prior to filing.

7 **43. Binding Agreement.** The Parties warrant that they understand and have full
8 authority to enter into this settlement, and further intended that this Agreement will be fully
9 enforceable and binding on all Parties, and agree that it will be admissible and subject to
10 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
11 provisions that otherwise might apply under federal or state law.

12 **44. Compliance with PAGA's Procedural Requirements.** Plaintiffs agree that
13 Plaintiffs' Counsel will notify the LWDA (with respect to each Plaintiff's PAGA notice letter) of
14 the Settlement at the same time this Settlement is submitted to the Court for approval, and perform
15 any and all statutory tasks as required by law necessary to effectuate consummation and approval
16 of this Settlement.

17 **45. Representation Regarding the Number of Pay Periods Worked by Aggrieved**
18 **Employees.** Davalan represents that there are approximately 3,581 pay periods worked by
19 Aggrieved Employees in California ("Affected Pay Periods") during the Settlement Period. If the
20 actual number of Affected Pay Periods during the Settlement Period is more than 10% greater than
21 this number (i.e., if there are more than 3,939 Affected Pay Periods during the Settlement Period),
22 Davalan shall increase the PAGA Gross Settlement Amount in proportion to the increase in
23 Affected Pay Periods over 10% (e.g., if the number of Affected Pay Periods in the Settlement
24 Period is 12% greater than 3,581, Davalan will increase the PAGA Gross Settlement Amount by
25 2%).

26 ///

27 ///

28 ///

1 SO AGREED:

2 Dated: PLAINTIFF

3

4 Alfredo Alvarez

5

6 Dated: PLAINTIFF

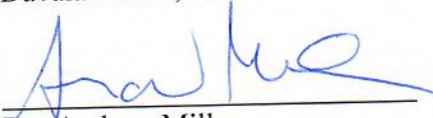
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8 Maria Robles

9

10 Dated: Davalan Sales, Inc.

11

12 
13 By: Andrew Miller,
14 its Chief Financial Officer

15 APPROVED AS TO FORM, AND AGREED TO AS APPLICABLE:

16

17 Dated: GAINES & GAINES, APLC

18

19 Daniel F. Gaines
20 Counsel for Plaintiffs

21

22 Dated: HAIG B. KAZANDJIAN LAWYERS, APC

23

24 Haig B. Kazandjian
25 Counsel for Plaintiffs

26 Dated: HILL, FARRER & BURRILL LLP

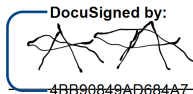
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28 James A. Bowles
Counsel for Defendant Davalan Sales, Inc.

1 SO AGREED:

2 Dated: January 13, 2021

PLAINTIFF

3  DocuSigned by:
4 4BB90849AD684A7...

Alfredo Alvarez

6 Dated:

PLAINTIFF

8 _____
Maria Robles

10 Dated:

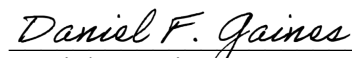
Davalan Sales, Inc.

12 _____
13 By: Andrew Miller,
its Chief Financial Officer

15 APPROVED AS TO FORM, AND AGREED TO AS APPLICABLE:

17 Dated: 1/13/2021

GAINES & GAINES, APLC

18 
19 Daniel F. Gaines
20 Counsel for Plaintiffs

21 Dated:

HAIG B. KAZANDJIAN LAWYERS, APC

23 _____
24 Haig B. Kazandjian
Counsel for Plaintiffs

25 Dated:

HILL, FARRER & BURRILL LLP

27 _____
28 James A. Bowles
Counsel for Defendant Davalan Sales, Inc.

1 SO AGREED:

2 Dated: PLAINTIFF

3
4 _____
Alfredo Alvarez

5
6 Dated: 01/19/2021 PLAINTIFF

7
8 
9 _____
Maria Robles

10 Dated: Davalan Sales, Inc.

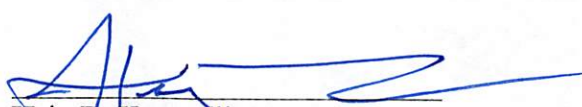
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12 _____
13 By: Andrew Miller,
14 its Chief Financial Officer

15 APPROVED AS TO FORM, AND AGREED TO AS APPLICABLE:

16
17 Dated: GAINES & GAINES, APLC

18
19 _____
20 Daniel F. Gaines
Counsel for Plaintiffs

21 Dated: 1/19/2021 HAIG B. KAZANDJIAN LAWYERS, APC

22
23 
24 _____
Haig B. Kazandjian
Counsel for Plaintiffs

25 Dated: HILL, FARRER & BURRILL LLP

26
27 _____
28 James A. Bowles
Counsel for Defendant Davalan Sales, Inc.

1 SO AGREED:

2 Dated: PLAINTIFF

3
4 _____
5 Alfredo Alvarez

6 Dated: PLAINTIFF

7
8 _____
9 Maria Robles

10 Dated: Davalan Sales, Inc.

11
12 _____
13 By: Andrew Miller,
14 its Chief Financial Officer

15 APPROVED AS TO FORM, AND AGREED TO AS APPLICABLE:

16
17 Dated: GAINES & GAINES, APLC

18
19 _____
20 Daniel F. Gaines
Counsel for Plaintiffs

21 Dated: HAIG B. KAZANDJIAN LAWYERS, APC

22
23 _____
24 Haig B. Kazandjian
Counsel for Plaintiffs

25 Dated: HILL, FARRER & BURRILL LLP

26
27 _____
28 James A. Bowles
Counsel for Defendant Davalan Sales, Inc.

EXHIBIT A

Date

NOTICE OF SETTLEMENT

Los Angeles County Superior Court Case No. 20STCV17792
Case Name: *Alfredo Alvarez and Maria Robles v. Davalan Sales, Inc.*

«FirstName» «LastName»
 «Address1» «Address2»
 «City» «State» «Zip»

You are receiving the enclosed check in settlement of a lawsuit entitled ALFREDO ALVAREZ and MARIA ROBLES, on behalf of themselves and all “aggrieved employees” pursuant to Labor Code § 2698 et seq., “Plaintiffs,” v. DAVALAN SALES, INC., a California corporation, and DOES 1 through 10, inclusive, (“Defendant”), Superior Court of the State of California, County of Los Angeles, Case Number 20STCV17792 (the “Lawsuit”).

In the Lawsuit, Plaintiffs pursued various claims for penalties against Defendant under the California Private Attorneys General Act of 2004 (“PAGA”). Defendant denies Plaintiffs’ claims in their entirety, and asserts it complied with the applicable law. However, the parties believe that continued litigation would be protracted, expensive, uncertain, and contrary to their best interests and, therefore, agreed to settlement of this lawsuit. The court has not ruled on the merits of this lawsuit, but it has approved the civil penalties settlement amount to be paid by Defendant. The settlement addresses claims for PAGA penalties on behalf of non-exempt employees who worked for Defendant in California at any time from March 5, 2019 through December 31, 2020 (the “PAGA Period”).

According to Defendant’s records, you worked for Defendant during the PAGA Period and are therefore entitled to a share of the settlement. Enclosed with this Notice is your settlement check. The settlement check shall remain valid for one hundred eighty (180) calendar days. Checks remaining un-cashed for more than 180 days after issuance will become void and the outstanding balance will be tendered to the California State Controller’s Office - Unclaimed Property Fund, to be held in your name.

While you were not a party to the Lawsuit, you and the State of California have been bound by the settlement entered in this matter and approved by the Court, including the release contained in the settlement. The release pertains to civil penalties under PAGA only. The release includes all claims under the PAGA that were alleged in Plaintiffs’ complaint in the Lawsuit.

If you have any questions, you can contact Simpluris, Inc., the Settlement Administrator, at 1-____-____.

EXHIBIT C

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

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Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

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Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

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Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ALFREDO ALVAREZ, MARIA ROBLES,
on behalf of themselves and all “aggrieved
employees” pursuant to Labor Code § 2698 *et*
seq.,

Plaintiffs,

v.

DAVALAN SALES, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. 20STCV17792

*Assigned for all purposes to Hon. Robert B.
Broadbelt, Dept. 53*

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201-202, 204, 206, 226(a), 226.7, 432, 510,
512, 1174, 1194, 1197, 1197.1, 1198, 2800,
AND 2802 AND PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 203, 226, 226.3, 246,
1174.5, 1182.12, 1198.5, AND 2810.5**

DEMAND FOR JURY TRIAL

Complaint Filed: May 11, 2020

1 Plaintiffs ALFREDO ALVAREZ and MARIA ROBLES (“Plaintiffs”), on behalf of
2 themselves and all non-exempt California employees of DAVALAN SALES, INC., a California
3 corporation, and/or any subsidiaries or affiliated companies (hereinafter collectively referred to as
4 “Defendants”) between March 5, 2019 through December 31, 2020 (“Aggrieved Employees”) under
5 the Labor Code Private Attorneys General Act of 2004, complain of Defendants as follows:

6 **I.**

7 **INTRODUCTION AND FACTUAL BACKGROUND**

8 1. This is a Representative Action, pursuant to Labor Code § 2698 et seq., on behalf of
9 Plaintiffs and Aggrieved Employees.

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiffs began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to pay Plaintiffs and other Aggrieved Employees all minimum wages and
15 overtime wages earned, in violation of Labor Code §§ 510, 558, 1182.12, 1194, 1197, 1197.1 and
16 2810.5. Plaintiffs and other Aggrieved Employees were required to work off-the-clock after they had
17 clocked out for the day. They were required to perform work-related activities, including helping
18 other employees with questions over the phone, all after clocking out from their shift and without
19 compensation. This violates Labor Code §§ 510, 558, 1182.12, 1194, 1197, 1197.1 and 2810.5.

20 b. Failing to pay all overtime and double-time wages due to Plaintiffs and Aggrieved
21 Employees, in violation of Labor Code §§ 510, 558, and 1194. Defendants paid Plaintiffs and
22 Aggrieved Employees straight time only with no adjustment for premium overtime or double-time
23 wages. Plaintiffs and Aggrieved Employees would routinely work between 8 and 12 hours per day,
24 but were never properly compensated for work performed in excess of eight (8) hours in a workday
25 and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-
26 half times the regular rate of pay or any double-time wages at a rate of no less than twice the regular
27 rate of pay for all work performed in excess of twelve (12) hours in a day. These failures to pay all
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1 overtime wages and double-time wages due constitute violations of Labor Code §§ 510, 558, and
2 1194;

3 c. Failing to pay premium wages to Plaintiffs and Aggrieved Employees who were
4 denied rest periods, in violation of Labor Code §§ 226.7, and IWC Wage Order 9-2001. Plaintiffs and
5 Aggrieved Employees were routinely unable, and not authorized, to take a 10-minute rest period for
6 every four (4) hours of work or major fraction thereof, but were not paid premium wages of one
7 hour's pay for each missed rest period. When they were able to take rest periods, they were oftentimes,
8 late, cut short, or on-duty. This violates Labor Code §§ 226.7, and IWC Wage Order 9-2001;

9 d. Failing to pay premium wages to Plaintiffs and Aggrieved Employees who were
10 denied meal periods, in violation of Labor Code §§ 226.7, 512 and IWC Wage Order 9-2001.
11 Plaintiffs and all other Aggrieved Employees were routinely denied, and not authorized to take, a
12 timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in
13 duration, or a second uninterrupted, 30-minute meal period for every shift worked that exceeded ten
14 hours in duration, but were not paid premium wages of one hour's pay for each missed meal period.
15 Defendants also failed to maintain required meal period records. The Wage Orders require that
16 California employers keep "[t]ime records showing when the employee begins and end each work
17 period, as well as meal periods" IWC Wage Order 9-2001(7)(a)(3). Additionally, Labor Code §
18 1174 requires employers to keep time records showing, among other things, all meal periods taken.
19 Defendants failed to maintain these records for Plaintiffs and other Aggrieved Employees. Defendants
20 failure to comply with these provisions violates Labor Code §§ 226.7, 512 and 1174 and IWC Wage
21 Order 9-2001;

22 e. Failing to issue Plaintiffs and other Aggrieved Employees accurately itemized
23 wage statements, in violation of Labor Code §§ 226(a), 246, 1174(d) and 1198. As Defendants failed
24 to compensate Plaintiffs and Aggrieved Employees with all wages due, as detailed above, their wage
25 statements failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1)
26 and 226.3, and net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3. Moreover, and
27 independent of the allegations above, Plaintiffs and all California employees of Defendants, including
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1 Aggrieved Employees, were not provided with wage statements or a separate document at the time
2 of the payment of wages that sets forth all accrued sick leave, in violation of Labor Code § 246(h);

3 f. Failing to timely pay Plaintiffs and certain Aggrieved Employees all wages due during
4 employment and at the separation of employment based on the time frames required by Labor Code
5 §§ 201, 202, and 204. As stated above, Plaintiffs and non-exempt Aggrieved Employees were not
6 paid all wages due during the course of their employment and, as a result of this failure, they were
7 not timely paid all wages due during their employment and upon the separation of their employment.
8 This violates Labor Code §§ 201, 202, and 204; and

9 g. Failing to reimburse Plaintiffs and other Aggrieved Employees for necessary business
10 expenses incurred in the direct consequence of the discharge of their duties, in violation of Labor
11 Code §§ 2800 and 2802, including, but not limited to, the use of their personal cellular phone, parking
12 expenses and travel expenses. Labor Code § 2802 states that an employer must indemnify its
13 employees for all necessary expenditures or losses incurred by the employee in direct consequence
14 of the discharge of their duties, and Defendants' failure to do so has violated this section.

15 h. Failing to provide Plaintiff Robles with copies of her employment records upon
16 request, as required by Labor Code §§ 226, 432, and 1198.5.

17 i. Failing to provide Plaintiffs and other Aggrieved Employees with documents
18 providing basic information regarding their employment, in violation of Labor Code § 2810.5.

19 3. Plaintiffs, on behalf of themselves and all Aggrieved Employees pursuant to Labor
20 Code § 2698 *et seq.*, seek civil penalties for Defendants' violations of the California Labor Code.

21 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
22 The Labor Code violations alleged against each Defendant herein arose in Los Angeles County,
23 California.

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1 II.

2 **PARTIES**

3 **A. Plaintiff**

4 5. Plaintiff ALFREDO ALVAREZ was employed by Defendants from 2008 through
5 August 2019 in Los Angeles County, California.

6 6. Plaintiff MARIA ROBLES was employed by Defendants from 1998 through October
7 2019 in Los Angeles County, California.

8 **B. Defendants**

9 7. Defendant DAVALAN SALES, INC. is a California corporation. Defendant
10 employed Plaintiffs and Aggrieved Employees throughout the State of California, including Los
11 Angeles County, California.

12 8. The true names and capacities, whether individual, corporate, associate, or otherwise,
13 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
14 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs
15 are informed and believe, and based thereon allege, that each of the Defendants designated herein as
16 a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will
17 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
18 designated hereinafter as DOES when such identities become known.

19 9. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
20 acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint
21 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is
22 legally attributable to the other Defendants.

23 10. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
24 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
25 provisions of the California Labor Code as alleged herein.

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III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201-202, 204, 206, 226(a), 226.7, 432, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800,
AND 2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 203, 226(f), 226.3, 246, 1174.5, 1182.12, 1198.5 AND 2810.5**

11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as though fully set forth herein.

12. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiffs seek civil penalties pursuant to Labor Code §§ 2698 *et seq.*

13. For each such violation, Plaintiffs and all other Aggrieved Employees are entitled to penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201-202, 204, 206, 226(a), 226.7, 432, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802.

b. Pursuant to Labor Code § 2699(a), the penalties as authorized by Labor Code §§ 203, 226(f), 226.3, 246, 1174.5, 1182.12, 1198.5, and 2810.5.

14. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

15. On March 5, 2020 and October 6, 2020, Plaintiffs sent letters, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiffs from the LWDA within sixty-five (65) calendar days of March 5, 2020 and October 6, 2020. Plaintiffs may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiffs and the Aggrieved Employees they seek to represent request relief as described below.

IV.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiffs and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Dated: January 19, 2021

GAINES & GAINES
A Professional Law Corporation

By: _____
DANIEL F. GAINES
EVAN S. GAINES
Attorneys for Plaintiffs

Dated: January 19, 2021

HAIG B. KAZANDJIAN LAWYERS, APC

By: HAIG B. KAZANDJIAN
Attorneys for Plaintiffs

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Alfredo Alvarez and Maria Robles

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ALFREDO ALVAREZ, MARIA ROBLES,
on behalf of themselves and all “aggrieved
employees” pursuant to Labor Code § 2698 *et*
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corporation, and DOES 1 through 10,
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CASE NO. 20STCV17792

*Assigned for all purposes to Hon. Robert B.
Broadbelt, Dept. 53*

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201-202, 204, 206, 226(a), 226.7, 432, 510,
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CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 203, 226, 226.3, 246,
1174.5, 1182.12, 1198.5, AND 2810.5**

DEMAND FOR JURY TRIAL

Complaint Filed: May 11, 2020

1 _____
2 Plaintiffs ALFREDO ALVAREZ and MARIA ROBLES (“Plaintiffs”), on behalf of
3 themselves and all non-exempt California employees of DAVALAN SALES, INC., a California
4 corporation, and/or any subsidiaries or affiliated companies (hereinafter collectively referred to as
5 “Defendants”) between March 5, 2019 through December 31, 2020 (“Aggrieved Employees”) under
6 the Labor Code Private Attorneys General Act of 2004, complain of Defendants as follows:

7 **I.**

8 **INTRODUCTION AND FACTUAL BACKGROUND**

9 1. This is a Representative Action, pursuant to Labor Code § 2698 et seq., on behalf of
10 Plaintiffs and Aggrieved Employees.

11 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
12 to the date Plaintiffs began the process of exhausting the administrative requirements, pursuant to
13 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
14 consistent policies of:

15 a. Failing to pay Plaintiffs and other Aggrieved Employees all minimum wages and
16 overtime wages earned, in violation of Labor Code §§ 510, 558, 1182.12, 1194, 1197, 1197.1 and
17 2810.5. Plaintiffs and other Aggrieved Employees were required to work off-the-clock after they had
18 clocked out for the day. They were required to perform work-related activities, including helping
19 other employees with questions over the phone, all after clocking out from their shift and without
20 compensation. This violates Labor Code §§ 510, 558, 1182.12, 1194, 1197, 1197.1 and 2810.5.

21 b. Failing to pay all overtime and double-time wages due to Plaintiffs and Aggrieved
22 Employees, in violation of Labor Code §§ 510, 558, and 1194. Defendants paid Plaintiffs and
23 Aggrieved Employees straight time only with no adjustment for premium overtime or double-time
24 wages. Plaintiffs and Aggrieved Employees would routinely work between 8 and 12 hours per day,
25 but were never properly compensated for work performed in excess of eight (8) hours in a workday
26 and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-
27 half times the regular rate of pay or any double-time wages at a rate of no less than twice the regular
28 rate of pay for all work performed in excess of twelve (12) hours in a day. These failures to pay all

1 overtime wages and double-time wages due constitute violations of Labor Code §§ 510, 558, and
2 1194;

3 c. Failing to pay premium wages to Plaintiffs and Aggrieved Employees who were
4 denied rest periods, in violation of Labor Code §§ 226.7, and IWC Wage Order 9-2001. Plaintiffs and
5 Aggrieved Employees were routinely unable, and not authorized, to take a 10-minute rest period for
6 every four (4) hours of work or major fraction thereof, but were not paid premium wages of one
7 hour's pay for each missed rest period. When they were able to take rest periods, they were oftentimes,
8 late, cut short, or on-duty. This violates Labor Code §§ 226.7, and IWC Wage Order 9-2001;

9 d. Failing to pay premium wages to Plaintiffs and Aggrieved Employees who were
10 denied meal periods, in violation of Labor Code §§ 226.7, 512 and IWC Wage Order 9-2001.
11 Plaintiffs and all other Aggrieved Employees were routinely denied, and not authorized to take, a
12 timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in
13 duration, or a second uninterrupted, 30-minute meal period for every shift worked that exceeded ten
14 hours in duration, but were not paid premium wages of one hour's pay for each missed meal period.
15 Defendants also failed to maintain required meal period records. The Wage Orders require that
16 California employers keep "[t]ime records showing when the employee begins and end each work
17 period, as well as meal periods" IWC Wage Order 9-2001(7)(a)(3). Additionally, Labor Code §
18 1174 requires employers to keep time records showing, among other things, all meal periods taken.
19 Defendants failed to maintain these records for Plaintiffs and other Aggrieved Employees. Defendants
20 failure to comply with these provisions violates Labor Code §§ 226.7, 512 and 1174 and IWC Wage
21 Order 9-2001;

22 e. Failing to issue Plaintiffs and other Aggrieved Employees accurately itemized
23 wage statements, in violation of Labor Code §§ 226(a), 246, 1174(d) and 1198. As Defendants failed
24 to compensate Plaintiffs and Aggrieved Employees with all wages due, as detailed above, their wage
25 statements failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1)
26 and 226.3, and net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3. Moreover, and
27 independent of the allegations above, Plaintiffs and all California employees of Defendants, including
28

1 Aggrieved Employees, were not provided with wage statements or a separate document at the time
2 of the payment of wages that sets forth all accrued sick leave, in violation of Labor Code § 246(h);

3 f. Failing to timely pay Plaintiffs and certain Aggrieved Employees all wages due during
4 employment and at the separation of employment based on the time frames required by Labor Code
5 §§ 201, 202, and 204. As stated above, Plaintiffs and non-exempt Aggrieved Employees were not
6 paid all wages due during the course of their employment and, as a result of this failure, they were
7 not timely paid all wages due during their employment and upon the separation of their employment.
8 This violates Labor Code §§ 201, 202, and 204; and

9 g. Failing to reimburse Plaintiffs and other Aggrieved Employees for necessary business
10 expenses incurred in the direct consequence of the discharge of their duties, in violation of Labor
11 Code §§ 2800 and 2802, including, but not limited to, the use of their personal cellular phone, parking
12 expenses and travel expenses. Labor Code § 2802 states that an employer must indemnify its
13 employees for all necessary expenditures or losses incurred by the employee in direct consequence
14 of the discharge of their duties, and Defendants' failure to do so has violated this section.

15 h. Failing to provide Plaintiff Robles with copies of her employment records upon
16 request, as required by Labor Code §§ 226, 432, and 1198.5.

17 i. Failing to provide Plaintiffs and other Aggrieved Employees with documents
18 providing basic information regarding their employment, in violation of Labor Code § 2810.5.

19 3. Plaintiffs, on behalf of themselves and all Aggrieved Employees pursuant to Labor
20 Code § 2698 *et seq.*, seek civil penalties for Defendants' violations of the California Labor Code.

21 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
22 The Labor Code violations alleged against each Defendant herein arose in Los Angeles County,
23 California.

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II.

PARTIES

A. Plaintiff

5. Plaintiff ALFREDO ALVAREZ was employed by Defendants from 2008 through August 2019 in Los Angeles County, California.

6. Plaintiff MARIA ROBLES was employed by Defendants from 1998 through October 2019 in Los Angeles County, California.

B. Defendants

7. Defendant DAVALAN SALES, INC. is a California corporation. Defendant employed Plaintiffs and Aggrieved Employees throughout the State of California, including Los Angeles County, California.

8. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

9. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

10. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

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III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST DEFENDANTS

**PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201-202, 204, 206, 226(a), 226.7, 432, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800,
AND 2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF**

LABOR CODE §§ 203, 226(f), 226.3, 246, 1174.5, 1182.12, 1198.5 AND 2810.5

11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as though fully set forth herein.

12. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiffs seek civil penalties pursuant to Labor Code §§ 2698 *et seq.*

13. For each such violation, Plaintiffs and all other Aggrieved Employees are entitled to penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201-202, 204, 206, 226(a), 226.7, 432, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802.

b. Pursuant to Labor Code § 2699(a), the penalties as authorized by Labor Code §§ 203, 226(f), 226.3, 246, 1174.5, 1182.12, 1198.5, and 2810.5.

14. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

15. On March 5, 2020 and October 6, 2020, Plaintiffs sent letters, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiffs from the LWDA within sixty-five (65) calendar days of March 5, 2020 and October 6, 2020. Plaintiffs may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiffs and the Aggrieved Employees they seek to represent request relief as described below.

IV.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiffs and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Dated: ~~January 19, 2021~~ December 29, 2020

GAINES & GAINES
A Professional Law Corporation

By: _____
DANIEL F. GAINES
EVAN S. GAINES
Attorneys for Plaintiffs

Dated: January 19, 2021~~December 29, 2020~~
APC

HAIG B. KAZANDJIAN LAWYERS,

By: _____

HAIG B. KAZANDJIAN
Attorneys for Plaintiffs

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1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Los Angeles State of California. I am over the age of 18 and not a party to the
3 within action; my business address is 27200 Agoura Road, Suite 101, Calabasas, CA 91301

4 _____ (For messenger) my business address is:

5 On January 20, 2021, I served the foregoing document described **DECLARATION OF EVAN S. GAINES**
6 **IN SUPPORT OF STIPULATION AND [PROPOSED] ORDER APPROVING SETTLEMENT OF CLAIMS,**
7 **PERMITTING PLAINTIFF LEAVE TO FILE A FIRST AMENDED COMPLAINT, AND DISMISSING**
8 **ACTION WITH PREJUDICE** on the interested parties in this action by placing a true copy thereof enclosed in sealed
9 envelopes addressed as follows:

James A. Bowles, Esq. Elissa L. Gysi, Esq. Berenika D. Palys, Esq. HILL, FARRER & BURRILL LLP One California Plaza, 37th Floor 300 South Grand Avenue Los Angeles, CA 90071-3147	Haig B. Kazandjian, Esq. Cathy Gonzalez, Esq. Kevin P. Crough, Esq. HAIG B. KAZANDJIAN LAWYERS APC 801 N Brand Blvd #970 Glendale, CA 91203
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11 On the above date:

12 ☒ (BY X U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was
13 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing
14 correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of
15 business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage
16 meter date is more than one day after date of deposit for mailing in affidavit.

17 _____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or
18 other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized
19 carrier or driver authorized by the express carrier to receive documents.

20 _____ (BY FACSIMILE TRANSMISSION) On _____, at _____ a.m./p.m., at Calabasas, California, I
21 served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008
22 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the
23 telephone number(s) of the receiving facsimile machine was (____) ____-____. A transmission report was properly
24 issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of
25 the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

26 _____ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-
27 delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

28 ☒ (ONLINE TO THE LWDA): I caused the above-described document to be delivered to the Labor Workforce
Development Agency via online process at the PAGA Filing website in accordance with the procedure
imposed by the LWDA.

I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 20, 2021, at Calabasas, California.

Beatriz Franco
BEATRIZ FRANCO