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9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF LOS ANGELES**

12 JOHNNY SALINAS MARTINEZ, MIGUEL
13 ESPINO, ALONSO ESPINOZA, TERESA
14 VELASQUEZ CRUZ, and KASSIDY WONG,
individuals, on behalf of themselves and all
15 other aggrieved employees similarly situated,

16 Plaintiffs,

17 vs.
18

19 NBA AUTOMOTIVE, INC., a California
20 corporation; HNL AUTOMOTIVE, INC., a
Delaware corporation; RHH AUTOMOTIVE,
21 INC., a California corporation; RHC
AUTOMOTIVE, INC., a California
22 corporation; HOOMAN NISSANI, an
individual; and DOES 1 to 100, inclusive,
23

24 Defendants.
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ORIGINAL FILED
Superior Court of California
County of Los Angeles

DEC 30 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By: Tanya Herrera, Deputy

CASE NO.

20STCV49612

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

JURY TRIAL DEMANDED

1 Plaintiffs JOHNNY SALINAS MARTINEZ, MIGUEL ESPINO, ALONSO ESPINOZA,
2 TERESA VELASQUEZ CRUZ, and KASSIDY WONG, individuals, on behalf of themselves
3 and all other aggrieved employees similarly situated (“Aggrieved Employees”), hereby file this
4 Complaint against Defendants NBA AUTOMOTIVE, INC., a California corporation; HNL
5 AUTOMOTIVE, INC., a Delaware corporation; RHH AUTOMOTIVE, INC., a California
6 corporation; RHC AUTOMOTIVE, INC., a California corporation; HOOMAN NISSANI, an
7 individual, and DOES 1 to 100, inclusive (collectively referred to herein as “Defendants”).
8 Plaintiffs allege as follows:

9 **THE PARTIES**

10 1. Plaintiff JOHNNY SALINAS MARTINEZ (“SALINAS MARTINEZ”) is, and at relevant
11 times was, an individual domiciled in the State of California and a citizen of the State of
12 California who worked as a non-exempt employee for Defendants in the State of California, for
13 approximately four (4) years until his last day worked, on or about April 7, 2020.

14 2. Plaintiff MIGUEL ESPINO (“ESPINO”) is, and at relevant times was, an individual
15 domiciled in the State of California and a citizen of the State of California who worked for
16 Defendants as non-exempt employee in the State of California, for approximately one (1) year
17 until his last day worked, on or about March 10, 2020.

18 3. Plaintiff ALONSO ESPINOZA (“ESPINOZA”) is, and at relevant times was, an
19 individual domiciled in the State of California and a citizen of the State of California who worked
20 as a non-exempt employee for Defendants in the State of California, for approximately one (1)
21 year, until his last day worked, in March 2020.

22 4. Plaintiff TERESA VELASQUEZ CRUZ (“VELASQUEZ CRUZ”) is, and at relevant
23 times was, an individual domiciled in the State of California and a citizen of the State of
24 California who worked as a non-exempt employee for Defendants in the State of California, for
25 approximately four (4) months, until her last day worked, in April 2020.

26 5. Plaintiff KASSIDY WONG (“WONG”) is, and at relevant times was, an individual
27 domiciled in the State of California and a citizen of the State of California who worked as a non-
28 exempt employee for Defendants in the State of California, for approximately five (5) months,

1 until her last day worked, in April 2020.

2 6. On information and belief, NBA AUTOMOTIVE, INC. (“NBA”) is a California
3 Corporation that, at all relevant times was authorized to do business within the State of California
4 and is doing business in the State of California.

5 7. On information and belief, HNL AUTOMOTIVE, INC. (“HNL”) is a Delaware
6 Corporation that, at all relevant times was authorized to do business within the State of California
7 and is doing business in the State of California.

8 8. On information and belief, RHH AUTOMOTIVE, INC. (“RHH”) is a California
9 Corporation that, at all relevant times was authorized to do business within the State of California
10 and is doing business in the State of California.

11 9. On information and belief, RHC AUTOMOTIVE, INC. (“RHC”) is a California
12 Corporation that, at all relevant times was authorized to do business within the State of California
13 and is doing business in the State of California.

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

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

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

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

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

13 14. Plaintiffs are informed and believes, and thereon allege that at all relevant times
14 Defendants operated as a single integrated enterprise with common ownership and centralized
15 human resources as a set forth herein. As a result, Defendants utilized the same unlawful wage
16 and hour policies and practices across all of their dealerships and subjected all Aggrieved
17 Employees to these same policies and practices regardless of the dealerships where they worked.

18 15. Plaintiff is informed and believes, and thereon alleges that at all times relevant to this
19 Complaint, Defendants were the joint employers of Plaintiff and/or the Aggrieved Employees
20 upon whose behalf Plaintiff brings these class action claims, in that Defendants, exercised
21 sufficient control over Plaintiff and the Aggrieved Employees' wages, hours and working
22 conditions, and/or suffered or permitted Plaintiff and the Aggrieved Employees to work, so as to
23 be considered the joint employers of Plaintiff and the Aggrieved Employees. Specifically, upon
24 information and belief, Plaintiff alleges that Defendants created a uniform set of written policies
25 and procedures concerning, inter alia, commission, piece rate, hourly and overtime pay, time-
26 keepign practices, meal and rest periods that were distributed to, applied to, and controlled the
27 wages, hours and working conditions of Plaintiff and the Aggrieved Employees, and further that
28 Defendants uniformly compensated and controlled the wages of Plaintiff and the Aggrieved

1 Employees in a uniform manner. Defendants collectively represented to Plaintiff and the
2 Aggrieved Employees that each was an “at-will” employee of Defendants, and that Defendants
3 collectively retained the right to terminate Plaintiff’s and the Aggrieved Employees’ employment
4 with or without cause. Upon information and belief, Defendants further collectively represented
5 to Plaintiff and the Aggrieved Employees in writing the details of their compensation and
6 commission pay agreements, and the manner in which he or she was to take meal and rest
7 periods, the procedures required by Defendants collectively for recordation of hours worked and
8 the policies applicable to Plaintiff and the Aggrieved Employees by which Defendants
9 collectively would evaluate the wage rate of Plaintiff and the Aggrieved Employees.

10 16. Thus, Defendants collectively exercised the right to control the wages, hours and working
11 conditions of Plaintiff and the Aggrieved Employees. Defendants informed Plaintiff and the
12 Aggrieved Employees in writing of the uniform standards by which Plaintiff and the Aggrieved
13 Employees would have to abide in their employment with Defendants. Further, upon information
14 and belief, Defendants collectively set forth guidelines concerning Plaintiff’s and the Aggrieved
15 Employees’ personal appearance at work with which each was required to comply as a condition
16 of his employment. As such, Defendants collectively held the right to control virtually every
17 aspect of Plaintiff’s and the Aggrieved Employees’ employment, including the instrumentality
18 that resulted in the illegal conduct for which Plaintiff seeks relief in this Complaint.

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

22 **JURISDICTION AND VENUE**

23 18. This court possesses original subject matter jurisdiction over this matter. Venue is proper
24 in Los Angeles County, California, because each Defendant maintains a principal place of
25 business in Los Angeles County and some of the complained of conduct occurred in this judicial
26 district.

27 **FACTUAL ALLEGATIONS**

28 19. During the one-year and sixty-five day period preceding filing of this Complaint,

1 Plaintiffs were employed by Defendants as non-exempt employees in the State of California.
2 Defendants, at all relevant times, exercised control over Plaintiffs and suffered and/or permitted
3 them to work.

4 20. Plaintiffs were paid either on an hourly, piece rate, commission-only and/or draw with
5 bonuses, or a hybrid of the foregoing pay structures. Plaintiffs typically worked shifts between
6 five (5) to twelve (12) hours per day, with many shifts lasting longer than twelve (12) hours per
7 work day.

8 21. Plaintiffs did not receive timely, compliant thirty-minute meal periods. Plaintiffs were
9 forced to take late first meal periods and/or work through their first meal periods or said meal
10 periods would be interrupted/cut short due to the nature and constraints of their job duties and
11 commentary from supervisors. Moreover, Plaintiffs did not receive second meal periods when
12 working shifts consisting of more than ten (10) hours. Plaintiffs, at times, were required to
13 consistently monitor their cell phones their meal periods and respond/greet customers, resulting in
14 on-duty meal periods. Defendants did not execute written on-duty meal period waiver agreements
15 with Plaintiffs. Moreover, Defendants did not pay a meal period premium for each
16 missed/improper meal period, and/or Defendants failed to pay a proper meal period premium for
17 failure to incorporate all non-discretionary forms of remuneration into the regular rate of pay for
18 purposes of calculating any owed meal period premium.

19 22. Plaintiffs did not receive compliant, timely 10 (ten)-minute rest periods every four hours
20 or major fraction thereof. Plaintiffs were typically required to take late rest periods and/or work
21 through their rest periods, or any purported rest periods would be interrupted/cut short due to the
22 nature and constraints of their job duties and commentary from supervisors to take late/shorter
23 breaks than they were entitled to or no breaks at all. Plaintiffs were not instructed nor provided
24 third rest periods after the 10th hour of work. Furthermore, Defendants prohibited Plaintiffs from
25 leaving the work premises during their shifts and required Plaintiffs to monitor their cell phones
26 at all times during their breaks and/or address/greet customers. This is illegal as employers cannot
27 require employees to stay on the work premises nor monitor a cell phone for work purposes
28 during their rest periods as “one cannot square the practice of compelling employees to remain at

1 the ready, tethered by time and policy to *particular locations* or *communications devices*, with the
2 requirement to relieve employees of all work duties and employer control during 10-minute rest
3 periods. [emphasis added].” *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269.
4 Given the number of hours Plaintiffs worked per shift, they were denied first, second and third
5 rest periods throughout the relevant time period. Plaintiffs were not paid rest period premiums
6 for these denied rest periods.

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

20 24. Notably, Plaintiffs were required to work through meal periods they were not paid for and
21 further, the commission-based compensation scheme instituted by Defendants resulted in pay
22 periods during which Plaintiffs were denied the minimum wage for all hours worked. Defendants
23 paid Plaintiffs on a draw and bonus and/or commission-only basis. However, Defendants failed
24 to separately compensate for all non-sales related/non-commission generating activities, including
25 but not limited to, time spent in meetings, time spent in training, time spent setting up vehicles/the
26 facility at the beginning and end of the day, standby time between sales, and all rest breaks.
27 Defendants’ failure to so separately compensate resulted in Plaintiffs not being paid for all hours
28 worked causing minimum wage violations.

1 25. Defendants failed to pay Plaintiffs all owed overtime wages. Defendants violated
2 California's overtime laws by, among other things, failing to correctly calculate, or record at all,
3 the total number of hours worked by Plaintiffs, and not paying proper overtime rates for failure to
4 incorporate all forms of non-discretionary remuneration, including but not limited to, non-
5 discretionary bonuses, into the regular rate of pay for purposes of calculating the owed overtime
6 wages. Based on Plaintiffs' regular work schedules, Plaintiffs worked a significant amount of
7 overtime each week for which they were not properly compensated.

8 26. Additionally, Defendants failed to reimburse Plaintiffs for incurred business expenses,
9 including cell phone and internet data usage, which was necessary to perform activities integral
10 and indispensable to their job duties and Defendants' policies and practices.

11 27. During the relevant time period, Defendants failed to furnish accurate wage statements in
12 compliance with Labor Code section 226. Based on the herein described minimum wage and
13 overtime violations, as well as Defendants' failure to properly compensate meal and rest
14 premiums and sick leave pay at the proper rate, Plaintiffs' paystubs, among other things, did not
15 include: (1) the correct total gross and net wages (2) all owed sick leave pay; and (3) all owed
16 meal and rest period premiums.

17 28. Based on the herein described minimum wage and overtime violations, as well as
18 Defendants' failure to properly compensate meal and rest premiums and sick leave pay at the
19 proper rate, inter alia, Defendants willfully failed to pay Plaintiffs for all hours worked during
20 employment and upon the separation of employment.

21 29. As described herein, Defendants failed to maintain accurate and complete time-
22 keeping records of Plaintiffs' meal periods, including start and stop times.

23 30. Plaintiffs bring this complaint under the Private Attorneys General Act of 2004, Labor
24 Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the State of
25 California, regarding violations of the Labor Code as to all similarly aggrieved individuals
26 employed by Defendants in the State of California as a non-exempt employee. This action is
27 brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

28 31. During the period beginning one-year period preceding the filing of the required PAGA

1 notice with the Labor Workforce and Development Agency, and continuing through the present, as
2 alleged herein, Defendants violated Labor Code sections 201-202, 204, 216, 221-223, 226,
3 226.2, 226.7, 226.8, 245-248.5, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, 2751, 2802,
4 2810, 2810.5 and all relevant sections of the applicable Wage Orders as to Plaintiffs and all
5 Aggrieved Employees employed by Defendants who worked as non-exempt hourly, commission,
6 and/or piece rate- based employees. These violations subject Defendants to civil penalties as
7 set forth in the foregoing statutes as well as other provisions of the Labor Code, including
8 without limitation Labor Code sections 203, 225.5, 256, 210, 1174.5, 1197.1 and 2699.

9 **THE "AGGRIEVED EMPLOYEES"**

10 32. Plaintiffs bring this action on behalf of themselves and all similarly situated aggrieved
11 employees. The other Aggrieved Employees shall be defined as follows: "All non-exempt
12 employees, whether hourly, commissioned and/or piece-rate paid, of NBA and HNL and
13 NISSANI, who were employed in California at any time within the one year and sixty-five days
14 prior to the filing of the initial complaint."

15 **FIRST CAUSE OF ACTION**

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

18 33. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

19 34. Under the Labor Code and IWC Wage Orders, Defendants were required to provide
20 Plaintiffs and the Aggrieved Employees with one 30-minute meal break free from all duties for all
21 shifts longer than 5 hours, and a second 30-minute meal break free from all duties for all shifts
22 longer than 10 hours. Meal periods can be waived, but only under the following circumstances:
23 (1) if an employee's total work period in a day is over five (5) hours but no more than six (6)
24 hours, the required meal period may be waived by mutual consent of the employer and employee,
25 and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve
26 (12) hours, the required second meal period may be waived by mutual consent of the employer
27 and employee, but only if the first meal period was not waived. Employers covered by the Wage
28 Orders have an obligation to both (1) relieve their employees for at least one meal period for

1 shifts over five hours (see above), and (2) to record having done so. If the employer fails to
2 properly record a valid meal period, it is presumed no meal period was provided.

3 35. Plaintiffs and the Aggrieved Employees regularly worked periods of more than five hours
4 in a workday without being provided a mandatory thirty-minute, duty-free meal period, and
5 regularly worked periods of more than ten and/or twelve hours in a workday without being
6 provided a mandatory second thirty-minute, duty-free meal period. Plaintiffs and the Aggrieved
7 Employees were also required to remain on-duty during certain meal periods, and had not
8 executed or otherwise agreed to a written on-duty meal period waiver agreement. Per Defendants'
9 illegal meal break policy/practice, Plaintiffs and the Aggrieved Employees were rarely, if ever,
10 relieved of their duties for purposes of taking meal breaks. Accordingly, Plaintiffs and the
11 Aggrieved Employees rarely, if ever, received proper meal breaks during the relevant time period.
12 Defendants also failed to pay Plaintiffs and the Aggrieved Employees one hour of premium pay at
13 the proper rate of regular pay for each workday a meal period was not provided. Defendants
14 either failed to compensate Plaintiff and the Aggrieved Employees with any meal period premium
15 for each denied/improper meal period or failed to pay the proper meal period premium for failure
16 to incorporate all non-discretionary remuneration into the regular pay rate for purposes of
17 calculating the owed meal period premium.

18 36. Defendants failed to provide Plaintiffs and the Aggrieved Employees all required and/or
19 fully compliant rest periods, or compensation in lieu thereof. Defendants employed policies and
20 procedures that ensured Plaintiffs and the Aggrieved Employees would not receive all legally
21 required rest periods, as Defendants did not authorize and permit all required rest periods in strict
22 accordance to, and in compliance with, the timing requirements of all applicable Wage Orders.
23 Defendants similarly employed policies and procedures that rendered rest breaks non-compliant
24 with the requirements of California law by, *inter alia*, failing to relieve Plaintiffs and the
25 Aggrieved Employees of all duties and all employer control. Defendants further employed
26 policies and procedures ensuring Plaintiffs and the Aggrieved Employees did not receive
27 premium wages to compensate them for workdays they did not receive all legally required and
28 fully compliant rest periods.

1 37. California law provides employees in California must be paid for all hours worked, up to
2 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.
3 California law also provides employees in California must be paid overtime, equal to 1.5 times
4 the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day.
5 Notably, Plaintiffs and the Aggrieved Employees were required to work through meal periods
6 they were not paid for and further, the commission-based compensation scheme instituted by
7 Defendants resulted in pay periods during which Plaintiffs and the Aggrieved Employees were
8 denied the minimum wage for all hours worked. Defendants paid Plaintiffs and the Aggrieved
9 Employees on a draw and bonus and/or commission-only basis. However, Defendants failed to
10 separately compensate for all non-sales related/non-commission generating activities, including
11 but not limited to, time spent in meetings, time spent in training, time spent setting up vehicles/the
12 facility at the beginning and end of the day, standby time between sales, and all rest breaks.
13 Defendants' failure to separately compensate resulted in Plaintiffs and the Aggrieved Employees
14 not being paid for all hours worked causing minimum wage violations. Plaintiffs and the
15 Aggrieved Employees regularly worked hours, including overtime hours, for which they were not
16 compensated by Defendants as required by California law. Defendants violated California's
17 overtime laws by, among other things, failing to correctly calculate, or record at all, the total
18 number of hours worked by Plaintiffs and the Aggrieved Employees and not paying proper
19 overtime rates for failure to incorporate all forms of non-discretionary remuneration, including
20 but not limited to, non-discretionary bonuses, into the regular rate of pay for purposes of
21 calculating the owed overtime wages.

22 38. Labor Code section 226.2 requires an employer to pay employees compensated on a
23 piece-rate/commission basis separately for rest and recovery periods and nonproductive time,
24 separate from any piece-rate commission. This statute further requires an employer to include on
25 the wage statements for these employees the total hours of compensable rest and recovery period,
26 the total hours for other non-productive time, the rates of compensation for these hours, and the
27 gross wages paid for these hours. In addition, the statute requires that employees shall be
28 compensated for rest and recovery periods at a regular hourly rate that is no less than the higher

1 of: (i) an average hourly rate determined by dividing the total compensation for the workweek,
2 exclusive of compensation for rest and recovery periods and any premium compensation for
3 overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods,
4 or (ii) The applicable minimum wage. California courts have held that this statute also applies to
5 employees paid on a commissioned basis.

6 39. During the PAGA period Defendant failed to comply with Labor Code section 226.2.
7 Specifically, Defendants failed to pay Plaintiffs and the Aggrieved Employees who were paid on
8 a piece rate or commissioned basis separately for the rest periods and nonproductive time, and/or
9 failed to pay them for this time at the correct rates. Defendants further failed to include the
10 information on these employees' wage statements required by this statute.

11 40. California law provides that, at the time of each payment of wages, the employer must
12 provide each employee with an itemized statement showing, *inter alia*, gross wages earned, total
13 hours worked, all deductions taken, net wages earned, the inclusive dates for which the employee
14 is being paid, the employee's name and last four digits of their social security number, the name
15 and address of the legal entity that it is the employer, and all applicable hourly rates in effect
16 during the pay period and all hours worked at each rate. Defendants knowingly and intentionally
17 failed to provide Plaintiffs and the Aggrieved Employees with proper, itemized wage statements
18 as the wage statements provided by Defendant do not accurately reflect, *inter alia*, gross wages
19 earned, net wages earned, all meal and rest period premiums, and all applicable hourly rates in
20 effect during each pay period and all hours worked at each applicable hourly rate. Accordingly,
21 Defendant has violated Labor Code section 226 as to Plaintiff and all the Aggrieved Employees.
22 These violations subject Defendants to civil penalties under the Labor Code, including without
23 limitation Labor Code sections 226 and 2699. Each violation of each Labor Code section and
24 Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

25 41. California law requires employers to keep "accurate and complete" payroll records
26 showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage
27 Order 5-2001, section 7, similarly requires employers to keep time records showing, *inter alia*,
28 when the employees begin and end each work period and reflecting the times during which all

1 owed meal periods are provided each day. At all relevant times, Defendants have failed, and
2 continue to fail, to keep the required time records, as Defendants did not provide and/or record all
3 of Plaintiffs and the Aggrieved Employees' time spent performing work during rest periods and
4 nonproductive time, and Defendants failed to provide and/or record employee meal periods.
5 Defendants' failure to keep "accurate and complete" payroll records for Plaintiffs and the
6 Aggrieved Employees violates Labor Code sections 1174, 1198-99, and Wage Order 5-2001,
7 section 7. These violations subject Defendant to civil penalties under the Labor Code, including
8 without limitation sections 1174.5 and 2699. Each violation of each Labor Code section and
9 Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

10 42. Together, Labor Code sections 1198 and 1199 make unlawful employment of any
11 individual under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or
12 neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
13 sections 1174, 1197, and 1198, or other order or ruling of the IWC. Defendants' violations with
14 respect to minimum wages and/or overtime wages, as alleged herein, result in separate violations
15 of Labor Code sections 1198 and 1199, and subject Defendants to civil penalties under the Labor
16 Code, including without limitation Labor Code sections 1197.1 and 2699. Each violation of each
17 Labor Code section and Wage Order provision, for each Aggrieved Employee, results in a
18 separate civil penalty.

19 43. California Labor Code section 204 requires an employer to pay employees all wages due
20 and payable at least twice each calendar month. Defendants failed to comply with Labor Code
21 section 204 by failing to timely pay twice during each calendar month all wages due and payable
22 to Plaintiffs and the Aggrieved Employees. Defendants' violations of Labor Code section 204
23 subject Defendant to civil penalties, including but not limited to the penalties set forth in
24 California Labor Code sections 210 and 2699. Each violation results in a separate civil penalty,
25 for each Aggrieved Employee for each pay period during which the statutory provisions were
26 violated.

27 44. Labor Code section 201 requires employers to pay all wages earned and unpaid at the time
28 of discharge, immediately upon discharge. Labor Code section 202 states similar provisions with

1 respect to employees who resign. For all Aggrieved Employees no longer employed by
2 Defendants, Defendants still have not paid such aggrieved employees all wages earned and
3 unpaid at the time of discharge, in that Defendants have not paid for, *inter alia*, time spent
4 performing work during uncompensated meal periods, all owed minimum and overtime wages,
5 and all owed meal and rest period premiums. These violations subject Defendants to civil
6 penalties under the Labor Code, including without limitation Labor Code sections 203, 256 and
7 2699. Each violation results in a separate civil penalty, for each Aggrieved Employee for each
8 pay period during which the statutory provisions were violated.

9 45. Labor Code section 216 declares unlawful an employer's refusal to pay wages due and
10 payable and/or denial of the validity of any claim to wages due. Defendants violated/violates this
11 section by failing to pay Plaintiffs and the Aggrieved Employees for all hours worked at the
12 proper wage rate and by failing to pay Plaintiffs and the Aggrieved Employees an additional hour
13 of pay for each meal/rest period not provided/that was invalid. These violations subject
14 Defendants to civil penalties under Labor Code section 225.5. Each violation results in a separate
15 civil penalty, for each aggrieved employee, for each pay period during which the statute
16 provisions were violated.

17 46. California Labor Code section 223 makes it unlawful for an employer to secretly pay
18 wages lower than required by statute while purporting to pay legal wages. As described above,
19 Defendants willfully and systematically denied Plaintiffs and the Aggrieved Employees minimum
20 wage compensation for all hours worked which resulted in the payment of less than statutorily
21 required wages to them. Defendants acted with the intent to deprive them of statutory wages,
22 including, but not limited to, overtime wages and minimum wages, to which they were entitled to
23 under California law.

24 47. Pursuant to California Labor Code section 2802, Plaintiff and the Aggrieved Employees
25 were entitled to be reimbursed for all reasonable expenses associated with carrying out orders by
26 their employer and/or carrying out the duties assigned by their employers. Defendants failed to
27 pay Plaintiff and the Aggrieved Employees for reimbursement of reasonable expenses, as
28 Defendant required Plaintiff and the Aggrieved Employees to use their cell phones for text

1 messaging, phone calls and internet/data usage to perform activities integral and indispensable to
2 their job duties.

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

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

27 50. Accordingly, Defendants has violated Labor Code sections 233 and 234 as to Plaintiffs
28 and the Aggrieved Employees. These violations subject Defendants to civil penalties under the

1 Labor Code, including without limitation Labor Code Section 233 and 234 and 2699. Each
2 violation of each Labor Code section and Wage Order provision, for each aggrieved employee,
3 results in a separate civil penalty.

4 51. Under the provisions of PAGA and Labor Code sections 201-202, 204, 216, 221-223, 226,
5 226.2, 226.7, 226.8, 233-234, 245-248.5, 256, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198,
6 1199, 2751, 2810, 2810.5, 2802 and all relevant sections of the applicable Wage Orders, as well
7 as all interpretations of these laws by California Courts and administrative bodies, as well as any
8 other law that is enforceable through PAGA, Defendants are liable for all statutorily-specified
9 penalties recoverable under PAGA as enumerated in the relevant California Labor Code
10 provisions listed herein, or for default PAGA penalties under Labor Code Section 2699(f) for any
11 violation of a Labor Code section without a specified civil penalty.

12 52. Plaintiffs complied with the procedures for bringing suit specified in Labor Code sections
13 2699.3 and 2699.5. Plaintiffs gave written notice to the California Labor and Workforce
14 Development Agency (“LWDA”) via electronic mail at PAGAfilings@dir.ca.gov and to
15 Defendants via certified mail 65 days prior to this Complaint of the specific provisions of the
16 Labor Code and Wage Orders allegedly violated, including the facts and theories to support the
17 alleged violations.

18 53. Under Labor Code section 2699.3, the LWDA must give written notice by certified mail
19 to the parties it intends to investigate the alleged violations within 65 days of the date of
20 Plaintiffs’ written notice. As of the expiration of the statutory exhaustion period, the LWDA has
21 not provided the parties any notice of its intention to investigate Plaintiffs’ claims on behalf of the
22 State of California and the Aggrieved Employees. As of the filing of this Complaint, Defendants
23 have not responded to Plaintiffs’ PAGA notice in an attempt to cure. Accordingly, Plaintiffs have
24 exhausted all administrative remedies required by law.

25 54. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
26 Plaintiffs are entitled to recover civil penalties, costs, plus reasonable attorney’s fees and costs, all
27 in an amount to be proved.

28 **PRAYER**

1 WHEREFORE, Plaintiffs pray for judgment against each Defendants, jointly and
2 severally, as follows:

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

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9 Dated: December 30, 2020

CROSNER LEGAL, P.C.

10 

11 Michael R. Crosner

12 Zachary M. Crosner

Blake R. Jones

13 Attorneys for Plaintiffs JOHNNY SALINAS

MARTINEZ, MIGUEL ESPINO, ALONSO

14 ESPINOZA, TERESA VELASQUEZ CRUZ, and

KASSIDY WONG

15
16 **DEMAND FOR JURY TRIAL**

17 Plaintiffs JOHNNY SALINAS MARTINEZ, MIGUEL ESPINO, ALONSO ESPINOZA,
18 TERESA VELASQUEZ CRUZ, and KASSIDY WONG demand a trial by jury on all claims so
19 triable.
20

21 Dated: December 30, 2020

CROSNER LEGAL, P.C.

22 

23 Michael R. Crosner

24 Zachary M. Crosner

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KASSIDY WONG
28