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ATTORNEYS FOR PLAINTIFF MOHAMMAD ALAVICHEH

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

MOHAMMAD ALAVICHEH; an individual,
on behalf of himself and on behalf of other
Aggrieved Employees and the State of
California,

Plaintiff,

v.

SUBURBAN BUICK GMC CADILLAC,
LLC., a Michigan Limited Liability Company;
and DOES 1-50, Inclusive,

Defendants.

Case No. 30-2021-01181315-CU-OE-CXC

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1) VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT PURSUANT
TO LABOR CODE SECTIONS 2698, et
seq.

Assigned for all purposes to: Judge Glenda Sanders
Dept: CX101

1 Plaintiff MOHAMMAD ALAVICHEH ("PLAINTIFF"), on behalf of the people of the State of
2 California and "aggrieved employees" acting as a private attorney general under the Labor Code Private
3 Attorney General Action of 2004, § 2699, *et seq.* ("PAGA") only, alleges on information and belief,
4 except for her own acts and knowledge which are based on personal knowledge, the following:

5 **INTRODUCTION**

6 1. PLAINTIFF brings this action against SUBURBAN BUICK GMC CADILLAC, LLC
7 ("DEFENDANT" or "DEFENDANTS") seeking only to recover PAGA civil penalties for himself, and
8 on behalf of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
9 does **not seek to recover anything other than penalties as permitted by California Labor Code §**
10 **2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF does not
11 seek underlying general and/or special damages for those violations in this action, but simply the civil
12 penalties permitted by California Labor Code § 2699. Notwithstanding, PLAINTIFF is not abandoning
13 his right to pursue his individual claims for, *inter alia*, Defendant's alleged wage violations, and/or
14 general or special damages arising from those violations, and he fully intends to, at a future date, pursue
15 claims for those individual claims and damages.

16 2. California has enacted the PAGA to permit an individual to bring an action on behalf of
17 herself and on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this
18 action.

19 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT's
20 violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any other
21 relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be construed as
22 attempting to obtain any relief that would not be available in a PAGA-only action.

23 **THE PARTIES**

24 4. DEFENDANT is a Michigan Limited Liability Company and at all relevant times
25 mentioned herein conducted and continues to conduct substantial and regular business throughout the
26 State of California.

27 5. DEFENDANT retails automobile vehicles. DEFENDANT offers new and used cars as
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1 well as financing, maintenance, and repair services.

2 6. PLAINTIFF was employed by DEFENDANT in California as a Sales Person and/or Floor
3 Manager from April 2019 until December 2019 and was at all times during his employment with
4 DEFENDANT entitled to be paid minimum wages and entitled to the legally required off-duty meal
5 and rest periods. PLAINTIFF from time to time was unable to take off duty meal and rest periods as a
6 result of DEFENDANT's work obligations. PLAINTIFF was also required to be paid for his rest
7 periods as DEFENDANT paid PLAINTIFF only commissions wages for certain pay periods.
8 DEFENDANT did not separately and/or properly compensate PLAINTIFF for his rest periods at his
9 regular rate of pay.

10 7. PLAINTIFF, and such persons that may be added from time to time who satisfy the
11 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
12 this Representative Action on behalf of the State of California with respect to himself and all individuals
13 who are or previously were employed by DEFENDANT in California (the "AGGRIEVED
14 EMPLOYEES") during the time period of November 18, 2019 until the present (the "PAGA PERIOD").

15 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or
16 formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action
17 pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S violation of California
18 Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 512, 558, 1194, 1197, 1197.1, and 2802,
19 and the applicable Wage Order. Based upon the foregoing, PLAINTIFF and all AGGRIEVED
20 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

21 9. The true names and capacities, whether individual, corporate, subsidiary, partnership,
22 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to
23 PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc.
24 Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and
25 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and
26 believes, and based upon that information and belief alleges, that the Defendants named in this
27 Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more
28 of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

10. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

11. During the PAGA PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other Aggrieved Employees as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and Aggrieved Employees did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. DEFENDANT'S meal period policies and practices were unlawful because PLAINTIFF and other Aggrieved Employees were far too over-booked and overworked to take a timely off-duty thirty (30) minute meal period. As a result of their rigorous work schedules, PLAINTIFF and other Aggrieved Employees were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the Aggrieved Employees with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the Aggrieved Employees forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

12. Further, DEFENDANT failed to provide PLAINTIFF and Aggrieved Employees with a second off-duty meal period on workdays in which these employees were required by DEFENDANT to work ten (10) hours of work from time to time. As a result, DEFENDANT'S failure to provide PLAINTIFF and the Aggrieved Employees with legally required meal breaks is evidenced by DEFENDANT's business records which contain no record of these breaks.

13. In addition, because of DEFENDANT's commission pay plan described herein, DEFENDANT failed to compensate PLAINTIFF and Aggrieved Employees for their rest periods as

1 required by the applicable Wage Order and Labor Code at their regular rate of pay. DEFENDANT did
2 not have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other Aggrieved
3 Employees at their regular rate of pay. As a result, DEFENDANT's failure to provide PLAINTIFF and
4 the Aggrieved Employees with all the legally required paid rest periods is evidenced by
5 DEFENDANT's business records.

6 14. On numerous occasions, PLAINTIFF and other CALIFORNIA CLASS Members were
7 required to work while not clocked in. DEFENDANT maintained a company-wide policy of refusing
8 to pay Aggrieved Employees, like PLAINTIFF, for all hours worked. Specifically, DEFENDANT
9 maintained a company-wide pattern and practice of altering employees' timecards to eliminate
10 numerous hours worked and to make employees work off-the-clock. As a result, DEFENDANT failed
11 to compensate PLAINTIFF and the Aggrieved Employees wages for all hours worked.

12 15. Under California law, every employer shall pay to each employee, on the established
13 payday for the period involved, not less than the applicable minimum wage for all hours worked in the
14 payroll period, whether the remuneration is measured by time, piece, commission, or otherwise. Hours
15 worked is defined in the applicable Wage Order as "the time during which an employee is subject to the
16 control of an employer, and includes all the time the employee is suffered or permitted to work, whether
17 or not required to do so. Here, PLAINTIFF and other AGGRIEVED EMPLOYEES were entitled to
18 separate hourly compensation for time spent performing all non-sales related tasks directed by
19 DEFENDANT during their work shifts, including, but not limited to, weekly sales meetings, and are
20 entitled to one hour of pay for their rest periods.

21 16. From time to time, when DEFENDANT did not accurately record PLAINTIFF's and
22 other Aggrieved Employees' missed meal and rest breaks and/or also failed to pay the proper minimum
23 wages and separate compensation for rest breaks, the wage statements issued to PLAINTIFF and other
24 Aggrieved Employees by DEFENDANT violated California law, and in particular, Labor Code Section
25 226(a). Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
26 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226
27 et seq. even when it paid separate compensation for rest breaks, because the wage statement failed to
28 reflect the total number of hours and the hourly rate for the separate rest break compensation.

1 17. Additionally, from time-to-time during the PAGA PERIOD, DEFENDANTS issued
2 PLAINTIFF and AGGRIEVED EMPLOYEES inaccurate wage statements that failed to show, among
3 other things, all applicable hourly rates in effect during the pay period and the corresponding amount
4 of time worked at each hourly rate and correct rates of pay. For instance, on numerous occasions,
5 PLAINTIFF received remuneration from DEFENDANTS described as "REST/RECOVER."
6 DEFENDANTS violated California Labor Code Section 226 by failing to list the applicable hourly
7 rate and the corresponding number of hours calculated at the applicable hourly rate for this line item.
8 PLAINTIFF, and all those similarly situated AGGRIEVED EMPLOYEES, suffered damage as a
9 result of DEFENDANTS' aforementioned violation because he could not promptly and easily
10 determine from the wage statement alone the applicable hourly rate and the corresponding number of
11 hours at the applicable hourly rate for this line item of remuneration described as "REST/RECOVER".

12 18. DEFENDANT as a matter of corporate policy, practice and procedure, intentionally,
13 knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the other Aggrieved
14 Employees for required business expenses incurred by the PLAINTIFF and other Aggrieved Employees
15 in direct consequence of discharging their duties on behalf of DEFENDANT. Under California Labor
16 Code Section 2802, employers are required to indemnify employees for all expenses incurred in the
17 course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
18 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
19 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of
20 the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed
21 them to be unlawful."

22 19. In the course of their employment PLAINTIFF and other Aggrieved Employees as a
23 business expense, were required by DEFENDANT to use their own personal cellular phones as a result
24 of and in furtherance of their job duties as employees for DEFENDANT but were not fully reimbursed
25 or indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones
26 for DEFENDANT's benefit. Specifically, PLAINTIFF and other Aggrieved Employees were required
27 by DEFENDANT to use their personal cell phones to for work related issues. As a result, in the course
28 of their employment with DEFENDANT the PLAINTIFF and other Aggrieved Employees incurred

unreimbursed business expenses which included, but were not limited to, costs related to the use of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

20. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to compensate PLAINTIFF and the other Aggrieved Employees for missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment for all time worked as required by California law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the Aggrieved Employees against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

21. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all required compensation for work performed by the members of the CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated thereunder as herein alleged.

22. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required off-duty meal breaks to him and paid rest periods to him at his regular rate of pay as required by the applicable Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for his missed meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent him from being relieved of all of his duties for the legally required off-duty meal periods. Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday in which PLAINTIFF was required by DEFENDANT to work ten (10) hours of work. As a result, DEFENDANT'S failure to provide PLAINTIFFS with the legally required second off-duty meal period is evidenced by DEFENDANT's business records. From time to time, and as a result of DEFENDANT not accurately recording all missed meal and rest periods, and failing to pay minimum wages due for all time worked and separate compensation for rest breaks, the wage statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of his wages due to him and all premiums due to him for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages owed to him under

1 California Labor Code Section 203.

2 **JURISDICTION AND VENUE**

3 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
4 Procedure, Section 410.10.

5 24. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
6 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained
7 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
8 committed the wrongful conduct herein alleged in this County against AGGRIEVED EMPLOYEES.

9 **FIRST CAUSE OF ACTION**

10 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

11 **[Cal. Lab. Code §§ 2698 et seq.]**

12 **(Alleged by PLAINTIFF against all Defendants)**

13 25. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein,
14 the prior paragraphs of this Complaint.

15 26. PAGA is a mechanism by which the State of California itself can enforce state labor laws
16 through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law
17 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
18 enforcement action designed to protect the public and not to benefit private parties. The purpose of
19 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
20 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
21 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
22 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly,
23 PAGA claims cannot be subject to arbitration.

24 27. PLAINTIFF, and such persons that may be added from time to time who satisfy the
25 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
26 this Representative Action on behalf of the State of California with respect to herself and all individuals
27 who are or previously were employed by DEFENDANT in California during the time period of
28 November 18, 2019 until the present (the "AGGRIEVED EMPLOYEES").

1 28. On November 18, 2020, PLAINTIFF gave written notice by certified mail to the Labor
2 and Workforce Development Agency (the "Agency") and the employer of the specific provisions
3 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
4 hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add
5 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF
6 may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
7 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

8 29. The policies, acts and practices heretofore described were and are an unlawful business
9 act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
10 minimum wages and separately compensated rest breaks at their regular rate of pay, (b) failed to provide
11 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to
12 provide accurate itemized wage statements, and (d) failed to timely pay wages, all in violation of the
13 applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code
14 §§ 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 512, 558, 1194, 1197, 1197.1, and 2802, and the
15 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such
16 conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private
17 Attorney General Act of 2004 as the representative of the State of California for the illegal conduct
18 perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

19 30. Some or all of the conduct and violations alleged herein occurred during the PAGA
20 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF
21 during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other
22 AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See
23 also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an
24 “aggrieved employee”—a person affected by **at least one** Labor Code violation committed by an
25 employer—to pursue penalties for all the Labor Code violations committed by that employer.”],
26 Emphasis added, reh'g denied (June 13, 2018).)

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally,
3 as follows:

4 1. On behalf of the State of California and with respect to all AGGRIEVED
5 EMPLOYEES:

6 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
7 General Act of 2004; and

8 b. An award of penalties, attorneys' fees and costs of suit, as allowable under the
9 law.

10
11 Dated: January 27, 2021

Respectfully Submitted,
ZAKAY LAW GROUP, A.P.C.

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13 By: 
14 Shani O. Zakay
15 Attorneys for Plaintiff
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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #32401

November 18, 2020

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

SUBURBAN BUICK GMC CADILLAC, LLC.

GINGER PRESLEY

2600 HARBOR BLVD

COSTA MESA CA 92626

Certified Mail Receipt No. 7020 2450 0001 4373 5188

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 512, 558, 1194, 1197, 1197.1, and 2802, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff Mohammad Alavicheh (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against SUBURBAN BUICK GMC CADILLAC, LLC, a Michigan limited liability company (“Defendant” or “Defendants”). Plaintiff was employed by Defendant in California from April 2019 until December 2019 as a salesperson and/or floor manager, earning a draw vs. commission compensation, and entitled to the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks, and failed to separately compensate Plaintiff and other Aggrieved Employees for their rest breaks at their regular rate of pay. As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a), including failure to list the number of hours and hourly rate for certain remunerations. Additionally, Plaintiff contends that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep accurate time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 512, 558, 1194, 1197, 1197.1, and 2802 violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

The Aggrieved Employees include all individuals who are or were previously employed by Defendant in any non-exempt and/or exempt positions.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized, flowing script.

Shani O. Zakay
Attorney for Mohammad Alavicheh

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ATTORNEYS FOR PLAINTIFF MOHAMMAD ALAVICHEH

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Case No.

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2 California and “aggrieved employees” acting as a private attorney general under the Labor Code Private
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4 except for her own acts and knowledge which are based on personal knowledge, the following:

5 **INTRODUCTION**

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7 (“DEFENDANT” or “DEFENDANTS”) seeking only to recover PAGA civil penalties for himself, and
8 on behalf of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
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10 **2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF does not
11 seek underlying general and/or special damages for those violations in this action, but simply the civil
12 penalties permitted by California Labor Code § 2699. Notwithstanding, PLAINTIFF is not abandoning
13 his right to pursue his individual claims for, *inter alia*, Defendant’s alleged wage violations, and/or
14 general or special damages arising from those violations, and he fully intends to, at a future date, pursue
15 claims for those individual claims and damages.

16 2. California has enacted the PAGA to permit an individual to bring an action on behalf of
17 herself and on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this
18 action.

19 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT’s
20 violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any other
21 relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be construed as
22 attempting to obtain any relief that would not be available in a PAGA-only action.

23 **THE PARTIES**

24 4. DEFENDANT is a Michigan Limited Liability Company and at all relevant times
25 mentioned herein conducted and continues to conduct substantial and regular business throughout the
26 State of California.

27 5. DEFENDANT retails automobile vehicles. DEFENDANT offers new and used cars as
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1 well as financing, maintenance, and repair services.

2 6. PLAINTIFF was employed by DEFENDANT in California as a Sales Person and/or Floor
3 Manager from April 2019 until December 2019 and was at all times during his employment with
4 DEFENDANT entitled to be paid minimum wages and entitled to the legally required off-duty meal
5 and rest periods. PLAINTIFF from time to time was unable to take off duty meal and rest periods as a
6 result of DEFENDANT's work obligations. PLAINTIFF was also required to be paid for his rest
7 periods as DEFENDANT paid PLAINTIFF only commissions wages for certain pay periods.
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9 regular rate of pay.

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11 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
12 this Representative Action on behalf of the State of California with respect to himself and all individuals
13 who are or previously were employed by DEFENDANT in California (the "AGGRIEVED
14 EMPLOYEES") during the time period of November 18, 2019 until the present (the "PAGA PERIOD").

15 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or
16 formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action
17 pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S violation of California
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19 and the applicable Wage Order. Based upon the foregoing, PLAINTIFF and all AGGRIEVED
20 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

21 9. The true names and capacities, whether individual, corporate, subsidiary, partnership,
22 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to
23 PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc.
24 Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and
25 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and
26 believes, and based upon that information and belief alleges, that the Defendants named in this
27 Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more
28 of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

10. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

11. During the PAGA PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other Aggrieved Employees as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and Aggrieved Employees did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. DEFENDANT'S meal period policies and practices were unlawful because PLAINTIFF and other Aggrieved Employees were far too over-booked and overworked to take a timely off-duty thirty (30) minute meal period. As a result of their rigorous work schedules, PLAINTIFF and other Aggrieved Employees were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the Aggrieved Employees with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the Aggrieved Employees forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

12. Further, DEFENDANT failed to provide PLAINTIFF and Aggrieved Employees with a second off-duty meal period on workdays in which these employees were required by DEFENDANT to work ten (10) hours of work from time to time. As a result, DEFENDANT'S failure to provide PLAINTIFF and the Aggrieved Employees with legally required meal breaks is evidenced by DEFENDANT's business records which contain no record of these breaks.

13. In addition, because of DEFENDANT's commission pay plan described herein, DEFENDANT failed to compensate PLAINTIFF and Aggrieved Employees for their rest periods as

1 required by the applicable Wage Order and Labor Code at their regular rate of pay. DEFENDANT did
2 not have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other Aggrieved
3 Employees at their regular rate of pay. As a result, DEFENDANT's failure to provide PLAINTIFF and
4 the Aggrieved Employees with all the legally required paid rest periods is evidenced by
5 DEFENDANT's business records.

6 14. On numerous occasions, PLAINTIFF and other CALIFORNIA CLASS Members were
7 required to work while not clocked in. DEFENDANT maintained a company-wide policy of refusing
8 to pay Aggrieved Employees, like PLAINTIFF, for all hours worked. Specifically, DEFENDANT
9 maintained a company-wide pattern and practice of altering employees' timecards to eliminate
10 numerous hours worked and to make employees work off-the-clock. As a result, DEFENDANT failed
11 to compensate PLAINTIFF and the Aggrieved Employees wages for all hours worked.

12 15. Under California law, every employer shall pay to each employee, on the established
13 payday for the period involved, not less than the applicable minimum wage for all hours worked in the
14 payroll period, whether the remuneration is measured by time, piece, commission, or otherwise. Hours
15 worked is defined in the applicable Wage Order as "the time during which an employee is subject to the
16 control of an employer, and includes all the time the employee is suffered or permitted to work, whether
17 or not required to do so. Here, PLAINTIFF and other AGGRIEVED EMPLOYEES were entitled to
18 separate hourly compensation for time spent performing all non-sales related tasks directed by
19 DEFENDANT during their work shifts, including, but not limited to, weekly sales meetings, and are
20 entitled to one hour of pay for their rest periods.

21 16. From time to time, when DEFENDANT did not accurately record PLAINTIFF's and
22 other Aggrieved Employees' missed meal and rest breaks and/or also failed to pay the proper minimum
23 wages and separate compensation for rest breaks, the wage statements issued to PLAINTIFF and other
24 Aggrieved Employees by DEFENDANT violated California law, and in particular, Labor Code Section
25 226(a). Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
26 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226
27 et seq. even when it paid separate compensation for rest breaks, because the wage statement failed to
28 reflect the total number of hours and the hourly rate for the separate rest break compensation.

1 17. Additionally, from time-to-time during the PAGA PERIOD, DEFENDANTS issued
2 PLAINTIFF and AGGRIEVED EMPLOYEES inaccurate wage statements that failed to show, among
3 other things, all applicable hourly rates in effect during the pay period and the corresponding amount
4 of time worked at each hourly rate and correct rates of pay. For instance, on numerous occasions,
5 PLAINTIFF received renumeration from DEFENDANTS described as "REST/RECOVER."
6 DEFENDANTS violated California Labor Code Section 226 by failing to list the applicable hourly
7 rate and the corresponding number of hours calculated at the applicable hourly rate for this line item.
8 PLAINTIFF, and all those similarly situated AGGRIEVED EMPLOYEES, suffered damage as a
9 result of DEFENDANTS' aforementioned violation because he could not promptly and easily
10 determine from the wage statement alone the applicable hourly rate and the corresponding number of
11 hours at the applicable hourly rate for this line item of renumeration described as "REST/RECOVER".

12 18. DEFENDANT as a matter of corporate policy, practice and procedure, intentionally,
13 knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the other Aggrieved
14 Employees for required business expenses incurred by the PLAINTIFF and other Aggrieved Employees
15 in direct consequence of discharging their duties on behalf of DEFENDANT. Under California Labor
16 Code Section 2802, employers are required to indemnify employees for all expenses incurred in the
17 course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
18 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
19 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of
20 the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed
21 them to be unlawful."

22 19. In the course of their employment PLAINTIFF and other Aggrieved Employees as a
23 business expense, were required by DEFENDANT to use their own personal cellular phones as a result
24 of and in furtherance of their job duties as employees for DEFENDANT but were not fully reimbursed
25 or indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones
26 for DEFENDANT's benefit. Specifically, PLAINTIFF and other Aggrieved Employees were required
27 by DEFENDANT to use their personal cell phones to for work related issues. As a result, in the course
28 of their employment with DEFENDANT the PLAINTIFF and other Aggrieved Employees incurred

1 unreimbursed business expenses which included, but were not limited to, costs related to the use of their
2 personal cellular phones all on behalf of and for the benefit of DEFENDANT.

3 20. In violation of the applicable sections of the California Labor Code and the requirements
4 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
5 policy, practice and procedure, intentionally, knowingly and systematically failed to compensate
6 PLAINTIFF and the other Aggrieved Employees for missed meal and rest periods. This uniform policy
7 and practice of DEFENDANT is intended to purposefully avoid the payment for all time worked as
8 required by California law which allows DEFENDANT to illegally profit and gain an unfair advantage
9 over competitors who complied with the law. To the extent equitable tolling operates to toll claims by
10 the Aggrieved Employees against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

11 21. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden,
12 DEFENDANT failed to properly calculate and/or pay all required compensation for work performed by
13 the members of the CALIFORNIA CLASS and violated the California Labor Code and regulations
14 promulgated thereunder as herein alleged.

15 22. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required
16 off-duty meal breaks to him and paid rest periods to him at his regular rate of pay as required by the
17 applicable Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for his
18 missed meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent him
19 from being relieved of all of his duties for the legally required off-duty meal periods. Further,
20 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday in which
21 PLAINTIFF was required by DEFENDANT to work ten (10) hours of work. As a result,
22 DEFENDANT'S failure to provide PLAINTIFFS with the legally required second off-duty meal period
23 is evidenced by DEFENDANT's business records. From time to time, and as a result of DEFENDANT
24 not accurately recording all missed meal and rest periods, and failing to pay minimum wages due for
25 all time worked and separate compensation for rest breaks, the wage statements issued to PLAINTIFF
26 by DEFENDANT violated California law, and in particular, Labor Code Section 226(a). To date,
27 DEFENDANT has yet to pay PLAINTIFF all of his wages due to him and all premiums due to him for
28 missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages owed to him under

1 California Labor Code Section 203.

2 **JURISDICTION AND VENUE**

3 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
4 Procedure, Section 410.10.

5 24. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
6 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained
7 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
8 committed the wrongful conduct herein alleged in this County against AGGRIEVED EMPLOYEES.

9 **FIRST CAUSE OF ACTION**

10 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

11 **[Cal. Lab. Code §§ 2698 et seq.]**

12 **(Alleged by PLAINTIFF against all Defendants)**

13 25. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein,
14 the prior paragraphs of this Complaint.

15 26. PAGA is a mechanism by which the State of California itself can enforce state labor laws
16 through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law
17 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
18 enforcement action designed to protect the public and not to benefit private parties. The purpose of
19 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
20 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
21 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
22 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly,
23 PAGA claims cannot be subject to arbitration.

24 27. PLAINTIFF, and such persons that may be added from time to time who satisfy the
25 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
26 this Representative Action on behalf of the State of California with respect to herself and all individuals
27 who are or previously were employed by DEFENDANT in California during the time period of
28 November 18, 2019 until the present (the "AGGRIEVED EMPLOYEES").

1 28. On November 18, 2020, PLAINTIFF gave written notice by certified mail to the Labor
2 and Workforce Development Agency (the "Agency") and the employer of the specific provisions
3 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
4 hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add
5 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF
6 may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
7 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

8 29. The policies, acts and practices heretofore described were and are an unlawful business
9 act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
10 minimum wages and separately compensated rest breaks at their regular rate of pay, (b) failed to provide
11 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to
12 provide accurate itemized wage statements, and (d) failed to timely pay wages, all in violation of the
13 applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code
14 §§ 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 512, 558, 1194, 1197, 1197.1, and 2802, and the
15 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such
16 conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private
17 Attorney General Act of 2004 as the representative of the State of California for the illegal conduct
18 perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

19 30. Some or all of the conduct and violations alleged herein occurred during the PAGA
20 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF
21 during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other
22 AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See
23 also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an
24 “aggrieved employee”—a person affected by **at least one** Labor Code violation committed by an
25 employer—to pursue penalties for all the Labor Code violations committed by that employer.”],
26 Emphasis added, reh'g denied (June 13, 2018).)

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally,
3 as follows:

4 1. On behalf of the State of California and with respect to all AGGRIEVED
5 EMPLOYEES:

- 6 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
7 General Act of 2004; and
8 b. An award of penalties, attorneys' fees and costs of suit, as allowable under the
9 law.

10
11 Dated: November 20, 2020

Respectfully Submitted,
ZAKAY LAW GROUP, A.P.C.

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13 By: _____
14 Shani O. Zakay
15 Attorneys for Plaintiff
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