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10 Attorneys for Plaintiffs CHARLES
CRAFT, *et al.*

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN DIEGO

15 CHARLES CRAFT, an individual in his
16 representative capacity on behalf of all
17 Aggrieved Employees,

18 Plaintiffs,

19 v.

20 UAG ESCONDIDO M1, INC.; PENSKE
21 AUTOMOTIVE GROUP, INC., a
22 Delaware corporation; and DOES 1
23 through 50,

24 Defendants

) Case No.: 37-2021-00000982-CU-
OE-CTL

) Judge: Hon. Richard Straus
) Dept. 75

) **FIRST AMENDED CLASS AND
PAGA ACTION COMPLAINT**

-) 1. Failure to Pay State Minimum/Regular
Wages;
) 2. Failure to Pay State Overtime Wages;
) 3. Failure to Timely Pay Wages;
) 4. Meal and Rest Break Labor Code
Violations;
) 5. Inaccurate Wage Statements;
) 6. Failure to Maintain Payroll Records;
) 7. Failure to Reimburse Business Expenses in
Violation of Labor Code § 2802;
) 8. PAGA Claim for Failure to Comply with
California Sick Pay Laws; and
) 9. PAGA Claim for Miscellaneous Labor Code
Provisions

) Complaint Filed: Jan. 8, 2021

1 Plaintiff CHARLES CRAFT (“Plaintiff”), on behalf of himself and acting for
2 the interests of other current and former employees (cumulatively “Plaintiffs” or
3 “Aggrieved Employees”), hereby alleges against the named Defendants the
4 following:

5 **INTRODUCTION**

6 1. This is a wage and hour individual, class, and representative action under
7 Code Civil Procedure § 382 and the Private Attorneys General Act (“PAGA”) of
8 2004, as amended, Labor Code §§ 2698, *et seq.* case seeking unpaid wages and
9 related remedies.

10 2. By this action, Plaintiffs seek all legal remedies available to them caused
11 by Defendants’ violations of California law..

12 **JURISDICTION AND VENUE**

13 3. Pursuant to Article VI, § 10 of the California Constitution, subject matter
14 jurisdiction is proper in the Superior Court of California, County of San Diego, State
15 of California because Plaintiffs allege claims arising under California law.

16 4. This Court has jurisdiction over the Defendants because each is an
17 association, corporation, business entity, or individual that conducts business in the
18 State of California, County of San Diego.

19 5. Pursuant to § 395 of the California Code of Civil Procedure, venue is
20 proper in the Superior Court of California for the County of San Diego because this is
21 where Defendant employed Plaintiff and engaged in the wrongdoing described
22 herein.

23 **PARTIES**

24 6. Plaintiff CHARLES CRAFT is an individual over the age of 18, and at
25 all times during his employment by Defendants herein was a resident of the County
26 of San Diego, California.

27 7. Defendant UAG ESCONDIDO M1, INC. is a Delaware Corporation
28 doing business in California.

1 8. Defendant PENSKE AUTOMOTIVE GROUP, INC., *dba* Penske
2 Automotive Group is a Delaware corporation doing business in California.

3 9. The true names and capacities, whether individual, corporate, associate,
4 or otherwise of the Defendants named herein as DOES 1 through 50, are unknown to
5 Plaintiffs at this time. Plaintiffs therefore sue said Defendants by such fictitious
6 names pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will
7 seek leave to amend this Complaint to allege the true names and capacities of DOES
8 1 through 50 when the correct identities are ascertained. Plaintiffs are informed and
9 believe, and based thereon allege, that each of the DOE Defendants is in some
10 manner liable to Plaintiffs for the events and actions alleged herein. All named
11 Defendants and DOES 1 through 50 are included in the definition of “Defendants.”

12 10. Plaintiffs are informed and believe, and based thereon allege, that at all
13 times relevant herein each Defendant was acting as an agent, joint venture, or as an
14 integrated enterprise and/or alter ego for each of the other Defendants, and each was a
15 co-conspirator with respect to the acts and the wrongful conduct alleged herein, so
16 that each is responsible for the acts of the other in connection with the conspiracy and
17 in proximate connection with the other Defendants.

18 11. Plaintiffs are informed and believe, and based thereon allege, that each
19 Defendant was acting partly within and partly without the scope and course of their
20 employment, and was acting with the knowledge, permission, consent, and
21 ratification of every other Defendant.

22 12. Plaintiffs are informed and believe, and based thereon allege, that each
23 of the Defendants was an agent, officer, director, managing general partner,
24 managing member, owner, co-owner, partner, employee, and/or representative of
25 each of the Defendants, and were at all times material hereto, acting within the
26 purpose and scope of such agency, employment, contract and/or representation, and
27 that each of them are jointly and severally liable to Plaintiffs and the Aggrieved
28 Employees for the acts alleged herein

13. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants are liable to Plaintiffs under legal theories and doctrines including but not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4) alter ego, based in part, on the facts set forth below.

14. Plaintiffs are informed and believe, and based thereon allege, that each of the named Defendants are part of an integrated enterprise and have acted or currently act as the employer and/or joint employer of Plaintiffs and Aggrieved Employees, making each of them liable for the wage and hour violations alleged herein.

FACTUAL ALLEGATIONS

15. Defendants operate car and truck businesses throughout the state of California.

16. Defendants employed Plaintiff as a porter from about August 28, 2019 to November 25, 2019 at one of Defendants' dealerships in Escondido, California.

17. Defendants paid Plaintiff on an hourly basis and considered him non-exempt.

Failure to Pay Wages

18. Plaintiff would be scheduled to start work at or around 6:30 a.m. most weekend shifts.

19. Based on Defendants' faulty timekeeping system, Plaintiff was unable to enter the dealership to clock in when arriving for work during his scheduled worktime because the room where the timeclock was located was locked and he could not enter the room until the alarm system was disabled.

20. Plaintiff was precluded from clocking-in until Defendants' lead mechanic arrived, at which time Defendants' lead mechanic unlocked the door and disabled the alarm system thus providing Plaintiff access to the timeclock.

21. As such, from the time Plaintiff arrived to work to the time until when the lead mechanic arrived--often periods exceeding 15 minutes--Defendants failed to pay

1 Plaintiff for unpaid work.

2 22. Additionally, Defendants required Plaintiff to take drug tests on three
3 separate occasions as a condition of his employment.

4 23. Defendants required Plaintiff to clock out of work and clock back in upon
5 completion of his drug tests.

6 24. Because of the foregoing policy, Defendants did not pay Plaintiff for his
7 time spent during the administration of the tests, which Plaintiff estimates each drug
8 test taking from one and two hours.

9 25. Plaintiff engaged in unpaid, off-the-clock work during the time it took to
10 submit to drug tests.

11 26. Defendants are in violation of the California Labor Code for its failure to
12 pay wages to Plaintiff for the off-the-clock work described above.

13 **Failure to Pay Wages Upon Termination of Employment**

14 27. Plaintiff was terminated by Defendants on November 25, 2019 and is still
15 owed wages for off-the-clock work in the mornings before the lead mechanic arrived
16 to unlock the door, as well as off-the-clock work in submitting to drug tests.

17 28. Defendants therefore violated the Labor Code by failing to pay Plaintiff
18 his wages due upon termination of his employment.

19 29. This claim is also premised, in part, on Plaintiffs' right to pursue all Labor
20 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
21 *USA, Inc.* (2018) 23 Cal.App.5th 745.

22 **Noncompliant Wage Statements**

23 30. During all times relevant, and pursuant to company policy and/or practice
24 and/or direction and continuing to the present, and pursuant to company policy and/or
25 practice and/or direction, Defendants issued confusing and inaccurate wage and
26 earning statements to Aggrieved Employees.

27 31. Specifically, Plaintiff's pay stubs were deficient in that they failed to
28 accurately state the total number of hours worked by Plaintiff due to the off-the-clock

1 work (Lab. Code § 226(a)(2)), they failed to accurately state Plaintiff's gross wages
2 because the wages were calculated based on undercounted hours (Lab. Code §
3 226(a)(1)), and they failed to accurately state Plaintiff's net pay because the wage
4 statements in every instance indicated that Plaintiff's net pay was "0.00." (Lab. Code
5 § 226(a)(1)).

6 32. This claim is also premised, in part, on Plaintiffs' right to pursue all Labor
7 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
8 *USA, Inc.* (2018) 23 Cal.App.5th 745.

9 **Failure to Maintain Records**

10 33. Lab. Code § 1174 required Defendants to maintain time records
11 showing when Plaintiff began and ended each work period, showing Plaintiff's
12 meal periods, and showing Plaintiff's total daily hours worked.

13 34. Further, Lab. Code § 1174 required Defendant to itemize in wage
14 statements all deductions from payment of wages to Plaintiff, notate Plaintiff's
15 total compensation earned, and notate Plaintiffs' rate of pay.

16 35. Defendant failed to maintain records that met these requirements.

17 36. This claim is also premised, in part, on Plaintiffs' right to pursue all
18 Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security*
19 *Services USA, Inc.* (2018) 23 Cal.App.5th 745.

20 **Unreimbursed Work-Related Expense Claims**

21 37. During all times relevant, and pursuant to company policy and/or
22 practice and/or direction, Defendants failed to reimburse Plaintiffs for all
23 expenditures and losses they incurred in the discharge of their duties.

24 38. For example, Plaintiff and other aggrieved employees maintained
25 cellular phones with service.

26 39. Defendants required Plaintiffs to use their personal cellular phones to
27 communicate with other employees and managerial personnel on work related topics.

28 40. This claim is also premised, in part, on Plaintiffs' right to pursue all

1 Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security*
2 *Services USA, Inc.* (2018) 23 Cal.App.5th 745.

3 **Unpaid Minimum/Regular Wages**

4 41. During all times relevant, and pursuant to company policy and/or
5 practice and/or direction, Plaintiffs are informed and believe, and based thereon
6 allege, that Defendants, based on the policies implemented and enforced by
7 Defendants, failed to pay Plaintiffs and Aggrieved Employees all their
8 regular/minimum/ prevailing wages, in an amount to be proven at trial.

9 42. The basis for Plaintiffs' and Aggrieved Employees' unpaid minimum
10 wage/regular wage claim is, among other things, the above alleged policies
11 implemented by Defendants, such as Defendants' requirement that Plaintiffs and
12 Aggrieved Employees to perform off-the-clock work, among other things.

13 43. This claim is also premised, in part, on Plaintiffs' right to pursue all
14 Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security*
15 *Services USA, Inc.* (2018) 23 Cal.App.5th 745.

16 **Meal and Rest Break Claims**

17 44. During all times relevant, Plaintiffs are informed and believe and
18 therefore allege that Defendants, based on the policies implemented and enforced by
19 Defendants, failed to permit Plaintiffs and Aggrieved Employees to take all of their
20 compliant off-duty meal and rest breaks during the required timeframe as required by
21 law and failed to pay them premium pay in lieu thereof, in an amount to be proven at
22 trial.

23 45. Many times, in an amount to be proven at trial, Plaintiffs are informed
24 and believe and therefore allege that in cases where Plaintiffs and Aggrieved
25 Employees worked more than five and/or ten hours in a workday, they were deprived
26 their right to take an uninterrupted meal break and Defendants failed to pay them
27 premium pay for their missed or noncompliant meal breaks.

28 46. Plaintiffs' rest break claim is premised on Defendants' policy that

1 required Plaintiff and Aggrieved Employees to work under circumstances where
2 taking a rest break was impracticable because of Defendants' policies that
3 discouraged their workers from taking rest breaks.

4 47. Because of Defendants' policy, Defendants prevented Plaintiffs and
5 Aggrieved Employees from taking all their uninterrupted rest breaks they had the
6 right to enjoy in an amount to be proven at trial, and Defendants failed to pay them
7 premium pay as required under California law. (*Augustus v. ABM Security Services*
8 (2016) 2 Cal.5th 257.)

9 48. This claim is also premised, in part, on Plaintiffs' right to pursue all
10 Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security*
11 *Services USA, Inc.* (2018) 23 Cal.App.5th 745.

12 **Derivative PAGA Claims**

13 49. During all times relevant, and pursuant to company policy and/or
14 practice and/or direction, Plaintiffs are informed and believe that Defendants failed to
15 permit Aggrieved Employees from taking at least one days rest in violation of Labor
16 Code §§ 551 and 552.

17 50. During all times relevant, and pursuant to company policy and/or
18 practice and/or direction, Aggrieved Employees did not receive their final paychecks
19 immediately upon involuntary termination or within 72 hours of voluntary separation,
20 Defendants did not pay all final wages at the location of employment, and said final
21 paychecks did not include all wages due to the employee.

22 51. Based on the foregoing misconduct, Defendants issued Plaintiffs
23 erroneous paystubs.

24 52. To date, Plaintiffs are informed and believe, and therefore allege, that
25 Defendants have not paid Aggrieved Employees all wages due and payable, in an
26 amount to be proven at trial in violation of Labor Code § 203 and 256 via PAGA.

27 53. This claim is also premised, in part, on Plaintiffs' right to pursue all
28 Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security*

1 *Services USA, Inc.* (2018) 23 Cal.App.5th 745.

2 **REPRESENTATIVE ACTION (i.e., PAGA) CLAIMS**

3 54. This wage and hour representative action filed pursuant to PAGA, §§
4 2698, 2699 generally consists of the following group:

5 **All current or former nonexempt employees who worked for the**
6 **Defendants in the state of California from one year before the PAGA**
7 **submission to the date of final judgment in this action.**

8 55. All members of the represented group will be referred to as the
9 “Aggrieved Employees.”

10 56. The “Representative Period” means from **one year before the PAGA**
11 **submission through the date of final judgment in this action.**

12 57. California law provides that an employee may file an action against an
13 employer for penalties in connection with violations of the Labor Code and Wage
14 Orders on behalf of him or herself and other aggrieved current and former employees.

15 58. At all material times, Defendants and DOES 1 through 50 were and/or
16 are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved
17 Employees’ employer, within the meaning of California Labor Code § 558, who
18 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
19 Labor Code or any provision regulating hours and days of work in any Order of the
20 Industrial Welfare Commission and, as such, are subject to penalties for each
21 underpaid employee as set for in Labor Code § 558.

22 59. As set forth in further detail below, as a result of the analysis and
23 investigation of the Plaintiff’s claims, Plaintiff has sent letters to the California Labor
24 and Workforce Development Agency (hereinafter referred to as “LWDA”) and to
25 Defendants informing Defendants of Plaintiffs’ claims and their intent to pursue
26 litigation.

27 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

28 60. Plaintiffs have sent their written notice to the Labor Workforce

1 Development Agency (LWDA) and Defendants of the specific sections of the
2 California Labor Code that Defendants violated and continue to violate.

3 61. Plaintiffs will file an amended complaint once they have exhausted their
4 administrative remedies and are entitled to pursue claims and remedies as authorized
5 by PAGA.

6 62. The Causes of Action alleged herein are appropriately suited for a
7 Representative Action under PAGA (Labor Code § 2698, *et seq.*) because:

8 a. This action alleges violations of California Labor Code
9 provisions that provide for a civil penalty to be assessed and
10 collected by the LWDA or any departments, divisions,
11 commissions, boards, agencies, or employees;

12 b. Plaintiffs are “aggrieved employees” because Plaintiffs were
13 employed by the alleged violator and had one or more of the
14 Labor Code violations alleged on this Complaint committed
15 against them; and

16 c. Plaintiffs will have satisfied the procedural requirements of
17 Labor Code § 2699.3, as set forth above.

18 **CLASS ACTION ALLEGATIONS**

19 63. Plaintiffs bring this action on behalf of themselves and all others
20 similarly situated as a Class Action.

21 64. Plaintiffs seek to represent a class composed of and defined as follows:

22 **All current and former nonexempt employees who worked**
23 **in the state of California from October 19, 2019 to the**
24 **present for the Defendants**

25 65. Plaintiffs also seek to represent the following subclasses defined as
26 follows:

27 **Unpaid Minimum/Prevailing Wage Subclass:** All members
28 of the Plaintiff Class who worked less than eight hours a day or
less than 40 hours in a workweek during the applicable statute

of limitations period.

Unpaid Overtime/Prevailing Wage Subclass: All members of the Plaintiff Class who worked more than eight hours a day or more than 40 hours in a workweek during the applicable statute of limitations period.

Unpaid Vacation Pay Subclass: All members of the Plaintiff Class who accrued and were not paid vacation by the Defendants pay during the applicable statute of limitations period.

Wage Statement Subclass: All members of the Plaintiff Class who worked for Defendants in California and did not receive accurate itemized wage statements as required by Labor Code § 226 during the applicable statute of limitations period.

Meal and Rest Break Subclass: All members of the Plaintiff Class who, during the applicable statute of limitations period worked for Defendants in California as an hourly-paid non-exempt employee and were not provided compliant meal and/or rest breaks and were not provided one hour of pay at their regular rate of compensation in lieu thereof during the applicable statute of limitations period.

Waiting Time Penalty Subclass: All nonexempt members of the Plaintiff Class whose employment was terminated during the applicable statute of limitations period and did not receive all wages in a timely manner as required by Labor Code §§ 201-204.

Failure to Reimburse Subclass: All nonexempt members of the Plaintiff Class whose expenses were never reimbursed as required by Labor Code § 2802.

UCL Subclass: All Members of the Plaintiff Class, who, during the relevant period, Defendants owe restitution in the form of (1) unreimbursed expenses and/or (2) wages earned and unpaid because of Defendants' uniform pay policies and procedures.

66. The above-mentioned class-members will collectively be referred to as

1 “Class Members.”

2 67.Plaintiffs reserve the right to amend or modify the class description with
3 greater specificity or further division into Classes or limitation to particular issues.

4 68.This action is brought and may properly be maintained as a Class Action
5 because there is a well-defined community of interest in the litigation and the
6 proposed Class Members are easily ascertainable.

7 **A. Numerosity**

8 69.The potential members of the Class as defined are so numerous or many,
9 that joinder of all the members of the Class is impracticable.

10 70.While the precise number of Class Members has not been determined at
11 the time, Defendants currently employ, and during the relevant time periods
12 employed, more than 100 Class Members.

13 71.Accounting for employee turnover during the relevant periods
14 necessarily increases the number substantially.

15 **B. Commonality**

16 72.There are questions of law and fact common to the Class that
17 predominates over any questions affecting only individual Class Members.

18 73.Common questions of law and fact include, without limitation and
19 subject to possible further amendment, the following:

- 20 a. Whether Defendants’ policy or practice of not paying Plaintiffs
21 and other similarly situated employees’ the lawful sum of
22 compensation for the hours they worked is illegal;
- 23 b. Whether Defendants violated California Labor Code § 227.3 by
24 failing to pay all vested vacation wages at the time of
25 termination of employment;
- 26 c. Whether Defendants violated Labor Code § 226 by not
27 providing accurate paystubs to and other similarly situated
28 employees;

- d. Whether Defendants violated the meal and rest break laws in California;
- e. Whether Defendants promptly paid all wages owed to Class members after the termination of the Class members' employment;
- f. Whether Defendants failed to reimburse the Class;
- g. Whether Defendants failed to maintain records; and
- h. Whether Plaintiffs and the members of the Classes may recover remedies pursuant to Business & Professions Code §§ 17200, *et seq.*

C. Typicality

74.Plaintiffs' claims are typical of the claims of the respective Classes because Plaintiffs and members of the proposed Classes sustained similar injuries and damages arising out of and caused by Defendants' common courses of conduct and policies in violation of laws, regulations that have the force and effect of law and statutes as alleged herein.

D. Adequacy of Representation

75.Plaintiffs do not have any conflicts of interest with other Class Members and will prosecute the case vigorously on behalf of the Classes.

76.Counsel representing Plaintiffs and the putative Classes are competent and experienced in litigating employment class actions, including wage and overtime class actions.

77.Plaintiffs will fairly and adequately represent and protect the interests of the Class Members.

E. Superiority of Class Action and Manageability

78.A class action is superior to other available means for the fair and efficient adjudication of the controversy because individual joinder of all Class Members is not practicable, and questions of law and fact common to the Classes

1 predominate over any questions affecting only individual members of the Classes.

2 79. Each Class Member was damaged or suffered injury and may recover
3 remedies because of Defendants' illegal policies and/or practices.

4 80. Class Action treatment will allow those similarly situated persons to
5 litigate their claims in the manner that is most efficient and economical for the parties
6 and the judicial system.

7 81. Plaintiffs are unaware of any difficulties likely to be encountered in the
8 management of this action that would preclude maintenance as a Class Action.

9 82. At the appropriate time, Plaintiffs will present a trial methodology and
10 plan that will streamline the action, base liability and damages on common evidence
11 and common modes of proof through Defendants' corporate records, testimony of
12 corporate common policy and practices, representative evidence, sampled and
13 presented in a manner consistent with recognized scientific and statistical principles.

14 83. Such methodology may include bifurcation of liability and damages, the
15 use of professionally administered survey evidence, seeking adjudication of class-
16 wide legal issues of specific claims or preliminary factual issues, and other methods
17 or proposals to manage class-wide determinations common to all persons in the
18 proposed Class.

19 84. For the reasons alleged in this Complaint, this action should be certified
20 as a Class Action.

21 **FIRST CAUSE OF ACTION**

22 **Individual, Class, and Representative Claim via PAGA for**
23 **Failure to Pay Local/State Minimum/Regular Wages**
24 **in Violation of California Labor Code § 1194, 1197, 1198, and the applicable**
25 **Industrial Welfare Commission ("IWC") Wage Order via § 1198, and Where**
26 **applicable the Local Min. Wage Ordinance**
27 **(Against all Defendants)**

28 85. Plaintiffs re-allege and incorporate by reference the foregoing and

1 subsequent allegations as though set forth herein.

2 86. Pursuant to Labor Code §§ 1194, 1197, 1197.1, 1198, 1771, 1774, 1776,
3 1811, and 1815 it is unlawful for a California employer to suffer or permit an
4 employee to work without paying wages for all hours worked, as required by the
5 applicable Industrial Welfare Commission (“IWC”) Wage Order, including but not
6 limited to Wage Order 7, and applicable local law.

7 87. During all times relevant, Defendants were required to pay Plaintiffs and
8 other Aggrieved Employees their respective hourly rate for all hours worked and/or
9 minimum wages per state law, applicable local law, and/or prevailing wage law.

10 88. During all times relevant, at least one of the IWC Wage Orders applied
11 to Plaintiffs’ employment with Defendants.

12 89. Pursuant to the applicable Wage Order, “hours worked” include the time
13 during which an employee is “suffered or permitted to work, whether or not required
14 to do so.”

15 90. Under state and, where appropriate, local law, every employer must pay
16 each nonexempt employee minimum wages. (*See, e.g.,* Los Angeles County
17 Minimum Wage Ordinance (Chap. No. 8.100.010, *et seq.*); City of San Diego
18 Minimum Wage Ordinance, § 39.0107, etc.)

19 91. During the Representative Period and based on the misconduct alleged
20 above, Plaintiffs are informed and believe, and therefore allege, that Defendants did
21 not pay Plaintiffs and Aggrieved Employees minimum/regular/prevailing wages for
22 all hours suffered or permitted to work in violation of state and/or local law. (Labor
23 Code §§ 1194, 1197.1, *et seq.*)

24 92. Labor Code § 1194 subdivision (a) permits an action to recover wages
25 because of the payment of a wage less than the minimum wage “applicable to the
26 employee” including attorneys’ fees, costs, and interest.

27 93. At all material times, Defendants were and/or are Aggrieved
28 Employees’ employers or persons acting on behalf of Aggrieved Employees’

1 employer, within the meaning of California Labor Code §§ 558 and 558.1, who
2 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
3 Labor Code or any provision regulating hours and days of work in any Order of the
4 Industrial Welfare Commission and, as such, are subject to civil penalties for each
5 underpaid employee as set for in Labor Code § 558.

6 94. In committing the violations of state law as herein alleged, Plaintiffs
7 are informed and believe based there upon allege that Defendants have knowingly
8 and willfully refused to perform their obligations to compensate Aggrieved
9 Employees for all wages earned and all hours worked.

10 95. As a direct result, Aggrieved Employees have suffered and continue to
11 suffer, substantial losses related to the use and enjoyment of such compensation,
12 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
13 compel Defendants to fully perform their obligations under state and/or local law.

14 96. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of
15 them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per
16 pay period for the initial violation and two hundred (\$200.00) for each aggrieved
17 employee per pay period for each subsequent violation in which Defendants violated
18 the minimum wage and/or regular wage provisions of the Labor Code, including but
19 not limited to §§ 216, 218, 218.5, 558, 1182.12, 1194, 1194.2, and 1197, the exact
20 amount of the applicable penalty is all in an amount to be shown according to proof at
21 trial.

22 97. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
23 seek to recover from Defendants, and each of them, penalties, attorneys' fees, and
24 costs incurred herein.

25 **SECOND CAUSE OF ACTION**

26 **Individual, Class, and Representative Claim via PAGA for** 27 **Failure to Pay State Overtime and/or Double-Time Compensation** 28 **in Violation of California Labor Code §§ 216, 218, 218.5, 225.5, 510,**

1 should have received.

2 105. According to § 49.1.1 of the California Division of Labor Standards
3 and Enforcement Policies and Interpretations Manual, “In California, as with the
4 federal FLSA, overtime is computed based on the regular rate of pay. The regular rate
5 of pay includes many different kinds of remuneration, for example: hourly earnings,
6 salary, piecework earnings, commissions, *certain bonuses*, and the value of meals and
7 lodging.” (Emphasis added.)

8 106. As alleged herein, Defendants failed to, among other things alleged in
9 this Complaint, include non-discretionary incentive pay paid to Plaintiffs and
10 Aggrieved Employees when calculating their regular rate of pay for payment of
11 overtime and instead based overtime payments on their base hourly rates and
12 Defendants also underpaid Plaintiffs and Aggrieved Employees overtime by using
13 arbitrarily lower regular rates of pay and/or different erroneous overtime rates.

14 107. In committing the violations of state law as herein alleged, Defendants
15 have knowingly and willfully refused to perform their obligations to compensate
16 Aggrieved Employees for all wages earned and all hours worked.

17 108. At all material times, Defendants were and/or are Aggrieved Employees’
18 employers or persons acting on behalf of Aggrieved Employees’ employer, within the
19 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
20 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
21 regulating hours and days of work in any Order of the Industrial Welfare Commission
22 and, as such, are subject to penalties for each underpaid employee as set for in Labor
23 Code § 558.

24 109. In committing the violations of state law as herein alleged, Defendants
25 have knowingly and willfully refused to perform their obligations to compensate
26 Aggrieved Employees for all wages earned and all hours worked.

27 110. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
28 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay

1 period for the initial violation and two hundred (\$200.00) for each aggrieved
2 employee per pay period for each subsequent violation in which Defendants violated
3 the overtime provisions of the Labor Code, including but not limited to §§ 510, 558
4 and 1194, the exact amount of the penalties sought is in an amount to be shown
5 according to proof at trial.

6 111. Pursuant to Labor Code § 2699, Plaintiffs seek to recover from
7 Defendants, and each of them, penalties, attorneys' fees, and costs incurred herein.

8 9 **THIRD CAUSE OF ACTION**

10 **Individual, Class, and Representative Claim via PAGA for** 11 **Failure to Timely Pay Earned Wages Upon Separation of Employment in** 12 **Violation of California Labor Code §§ 201, 201.3, 202, 203, 204, 204b,** 13 **218.5, 218.6, 256, and 1198 via the applicable Wage Order**

14 (Against all Defendants)

15 112. Plaintiffs re-allege and incorporate by reference the foregoing and
16 subsequent allegations as though set forth herein.

17 113. Pursuant to Labor Code § 201, "If an employer discharges an employee,
18 the wages earned and unpaid at the time of discharge are due and payable
19 immediately."

20 114. Pursuant to Labor Code § 202, "If an employee not having a written
21 contract for a definite period quits his or her employment, his or her wages shall
22 become due and payable not later than 72 hours thereafter, unless the employee has
23 given 72 hours previous notice of his or her intention to quit, in which case the
24 employee is entitled to his or her wages at the time of quitting."

25 115. Labor Code § 203 provides, in pertinent part: "If an employer willfully
26 fails to pay, without abatement or reduction, ... any wages of an employee who is
27 discharged or who quits, the wages of the employee shall continue as a penalty from
28 the due date thereof at the same rate until paid or until an action therefore is

1 commenced; but the wages shall not continue for more than 30 days. ..."

2 116. Pursuant to Labor Code § 204, "all wages ... earned by any person in
3 any employment are due and payable twice during each calendar month, on days
4 designated in advance by the employer as the regular paydays."

5 117. Pursuant to Labor Code § 204b, "Labor performed by a weekly-paid
6 employee during any calendar week and prior to or on the regular payday shall be
7 paid for not later than the regular payday of the employer for such weekly-paid
8 employee falling during the following calendar week."

9 118. Plaintiffs are informed and believe, and therefore allege, that Defendants
10 did not properly pay Plaintiff and Aggrieved Employees pursuant to the requirements
11 of Labor Code §§ 201, 202, 204 and/or 204b and therefore Plaintiffs seek the unpaid
12 wages.

13 119. To date, Defendants have not paid Plaintiff and Aggrieved Employees
14 all earned wages as required by law.

15 120. At all material times, Defendants and DOES 1 through 50 were and/or
16 are Aggrieved Employees' employers or persons acting on behalf of Aggrieved
17 Employees' employer, within the meaning of California Labor Code § 558, who
18 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
19 Labor Code or any provision regulating hours and days of work in any Order of the
20 Industrial Welfare Commission and, as such, are subject to penalties for each
21 underpaid employee as set for in Labor Code § 558.

22 121. In committing the violations of state law as herein alleged, Defendants
23 have knowingly and willfully refused to perform their obligations to compensate
24 Aggrieved Employees for all wages earned and all hours worked.

25 122. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
26 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
27 period for the initial violation and two hundred (\$200.00) for each aggrieved
28 employee per pay period for each subsequent violation in which Defendants violated

1 Labor Code §§ 201, 202, 203, 204, 204b, and 256.

2 123. Plaintiffs and Aggrieved Employees have been deprived of their
3 rightfully earned wages as a direct and proximate result of Defendants' failure and
4 refusal to pay said compensation and for the reasons alleged in this Complaint

5 124. Plaintiffs seek all waiting time penalties, interest, attorneys' fees, costs,
6 damages, and other remedies pursuant to PAGA in an amount to be proven at trial.

7
8
9 **FOURTH CAUSE OF ACTION**

10 **Individual, Class, and Representative Claim via PAGA for**
11 **Failure to Comply with the Meal and Rest Break Requirements Under Labor**
12 **Code §§ 226.7, 512, 551, 552, and 1198 via the applicable IWC Wage Order**
13 **(Against all Defendants)**

14 125. Plaintiffs re-allege and incorporate by reference the foregoing and
15 subsequent allegations as though set forth herein.

16 126. Based on the misconduct alleged in this Complaint, Plaintiffs are
17 informed and believe, and therefore allege, that Defendants failed to pay Plaintiff and
18 Aggrieved Employees premium pay for all their missed meal and rest breaks and
19 failed to comply with Labor Code §§ 226.7, 512, and 1198.

20 127. In addition, during all times relevant, and pursuant to company policy
21 and/or practice and/or direction, Plaintiffs are informed and believe that Defendants
22 failed to permit Aggrieved Employees from taking at least one days rest in violation
23 of Labor Code §§ 551 and 552.

24 128. Because of Defendants' illegal pay practices, Plaintiffs are informed and
25 believe, and therefore allege, that said Defendants failed to pay Plaintiff and
26 Aggrieved Employees for all meal and rest breaks despite their requirement under
27 California law and, as such, all culpable Defendants are required to pay Plaintiff and
28 Aggrieved Employees for rest break and/or meal break premium wages.

1 129. Plaintiffs are informed and believe, and therefore allege, that Defendants
2 also failed to provide Plaintiff, and Aggrieved Employees, legally compliant meal
3 and rest periods, or compensation in lieu thereof, during their employment by said
4 Defendants.

5 130. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
6 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
7 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
8 pay period for each subsequent violation in which all culpable Defendants violated
9 Cal. Labor Code §§ 226.7 and 512, the exact amount of the applicable penalty is all
10 in an amount to be shown according to proof at trial.

11 131. Wherefore, Plaintiffs request all remedies available to them and to the
12 Aggrieved Employees pursuant to PAGA.

13 **FIFTH CAUSE OF ACTION**

14 **Individual, Class, and Representative Claim via PAGA for**
15 **Violations of California Labor Code §§ 226, 226.3, 226.6, and 1198**
16 **via the applicable IWC Wage Order**

17 (Against all Defendants)

18 132. Plaintiffs re-allege and incorporate by reference the foregoing and
19 subsequent allegations as though set forth herein.

20 133. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in
21 pertinent part, that every employer shall, “semimonthly or at the time of each
22 payment of wages, shall furnish to his or her employees, either as a detachable part of
23 the check, draft, or voucher paying the employee's wages, or separately if wages are
24 paid by personal check or cash, an accurate itemized statement in writing showing (1)
25 gross wages earned, (2) total hours worked by the employee. . . (3) the number of
26 piece-rate units earned and any applicable piece rate if the employee is paid on a
27 piece-rate basis, (4) all deductions, provided that all deductions made on written
28 orders of the employee may be aggregated and shown as one item, (5) net wages

1 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
2 name of the employee and only the last four digits of his or her social security
3 number..., (8) the name and address of the legal entity that is the employer. . ., and
4 (9) all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee and, beginning July 1,
6 2013, if the employer is a temporary services employer as defined in Section 201.3,
7 the rate of pay and the total hours worked for each temporary services assignment. . .”
8 (Labor Code § 226 subdivision (a).)

9 134. Upon information and belief, during all times relevant to this action,
10 Defendants did not provide accurate wage statements throughout the Representative
11 Period and, thus, Plaintiffs assert this claim both as a stand-alone claim and derivative
12 of their unpaid wage claims.

13 135. On numerous occasions, an exact amount by which will be proven at
14 trial, Defendants violated various provisions of § 226, including but not limited to
15 subdivisions (a)(1), (a)(2), (a)(4), (a)(5), and (a)(9) by failing to provide Plaintiffs and
16 the Aggrieved Employees accurate itemized statements in writing accurately showing
17 gross wages earned, total hours worked by the employee, net wages earned, and rates
18 of pay, among other things.

19 136. Plaintiff is informed and believes that Defendants had a policy and
20 practice of reporting all Aggrieved Employees’ net wages to be “0.00” on their wage
21 statements.

22 137. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
23 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
24 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
25 pay period for each subsequent violation in which all culpable Defendants violated
26 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact
27 amount of the applicable penalty is all in an amount to be shown according to proof at
28 trial.

1 138. Cal. Labor Code § 226.3 imposes upon all culpable Defendants a penalty
2 of two hundred fifty dollars (\$250.00) for each aggrieved employee per pay period
3 for the initial violation and one thousand dollars (\$1,000.00) for each aggrieved
4 employee per pay period for each subsequent violation in which all culpable
5 Defendants violated the applicable Cal. Labor Code provisions alleged in this
6 Complaint, the exact amount of the applicable penalty in an amount to be shown
7 according to proof at trial.

8 139. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
9 seek to recover from Defendants, and each of them, penalties, attorneys' fees, and
10 costs incurred herein under §§ 226, 226.3, and 226.6 in an amount to be proven at
11 trial.

12 **SIXTH CAUSE OF ACTION**

13 **Individual, Class, and Representative Claim via PAGA for** 14 **Failure to Maintain Required Records in Violation of California** 15 **Labor Code §§ 1174 and 1198 via the Applicable Wage Order** 16 **(Against All Defendants)**

17 140. As a separate and distinct cause of action, Plaintiff re-alleges and
18 incorporates by reference, as though fully set forth herein, all the allegations
19 contained in this Complaint, excepting those allegations that are inconsistent with this
20 cause of action.

21 141. The applicable wage order including at § 7 requires every employer to
22 maintain time and payroll records.

23 142. Plaintiffs are informed and believe and based thereon allege that during
24 all times relevant, Defendants failed to comply with § 7 of the applicable Wage Order
25 and with Labor Code § 1174 by failing to maintain certain records which employers
26 are required to maintain, including but not limited to, an accurate record indicating
27 the number hours worked by the Plaintiffs.

28 143. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a

1 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
2 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
3 pay period for each subsequent violation in which all culpable Defendants violated
4 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact
5 amount of the applicable penalty to be shown according to proof at trial.

6 144. For the reasons alleged herein, Plaintiffs seek all available remedies
7 pursuant to PAGA in an amount to be proven at trial including but not limited to
8 penalties, attorneys' fees, costs, and interest pursuant to law.

9 **SEVENTH CAUSE OF ACTION**

10 **Individual, Class, and Representative Claim via PAGA for** 11 **Failure to Failure to Indemnify/Reimburse Business Expenses in Violation of** 12 **California Labor Code §§ 2802 and 1198 via the Applicable Wage Order** 13 **(Against all Defendants)**

14 145. Plaintiffs re-allege and incorporate by reference the foregoing
15 allegations as though set forth herein.

16 146. California Labor Code § 2802 requires employers to indemnify their
17 employees for expenses and losses incurred while discharging their duties or
18 obedience to the directions of their employer.

19 147. California Labor Code § 2804 mandates that this statutory right cannot
20 be waived.

21 148. The Plaintiffs and the Aggrieved Employees incurred losses in
22 obedience to the directions of Defendants including but not limited to vehicle-related
23 expenses such as vehicle purchases and leases, fuel, insurance, and maintenance,
24 home office expenses, internet, fax machines, cell/home phone, computer, computer
25 repairs/upgrades/software, office space in their homes, gas and electric, water, and
26 other similar expenses.

27 149. Upon information and belief, Defendants maintained no policy of
28 reimbursement of such expenses, and refused to reimburse said expenses even though

1 the employer knew of and required work to be performed at home.

2 150. The Plaintiffs and Aggrieved Employees were required to purchase and
3 provide their own equipment, services, and supplies to work for Defendants.

4 151. As a direct result of Defendants' violations of California Labor Code §
5 2802, the Plaintiffs and Aggrieved Employees suffered and continue to suffer
6 substantial losses related to unpaid expenses, the use and enjoyment of monies owed,
7 lost interest on monies owed, and attorneys' fees in an amount to be proven at the
8 time of trial.

9 152. Defendants derived an unjust and inequitable economic benefit in failing
10 to comply with the law regarding indemnification and reimbursement of employees.

11 153. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
12 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
13 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
14 pay period for each subsequent violation in which all culpable Defendants violated
15 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact
16 amount of the applicable penalty is all in an amount to be shown according to proof at
17 trial.

18 154. For the reasons alleged herein, Plaintiffs seek all available remedies
19 pursuant to PAGA in an amount to be proven at trial including but not limited to
20 penalties, attorneys' fees, costs, and interest pursuant to law.

21 **EIGHTH CAUSE OF ACTION**

22 **Representative Claim for PAGA Penalties**

23 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

24 **Violations of California's Sick Pay Law Under**

25 **Labor Code §§ 246, 246.5, 247, 247.5, 248.5**

26 (Against all Defendants)

27 155. Plaintiffs re-allege and incorporate by reference the foregoing
28 allegations as though set forth herein.

156. This claim is also premised on Plaintiffs' right to pursue all Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.

157. Plaintiffs are informed and believe, and therefore allege, that Defendants did not comply with California's sick pay laws.

158. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred (\$200.00) for each aggrieved employee per pay period for each subsequent violation in which all culpable Defendants violated the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

159. For the reasons alleged herein, Plaintiffs seek all available remedies pursuant to PAGA in an amount to be proven at trial including but not limited to penalties, attorneys' fees, costs, and interest pursuant to law.

NINTH CAUSE OF ACTION

Individual and Representative Claim for PAGA Penalties and Wage

Under California Labor Code §§ 2698, 2699, *et seq.* for Violations of California Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5, 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the applicable Wage Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391,

1 **1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections**
2 **1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25,**
3 **1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5, 2651, and 2673,**
4 **subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2806, and 2810,**
5 **subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7**
6 (Against all Defendants)

7 160. Plaintiffs re-allege and incorporate by reference the foregoing
8 allegations as though set forth herein.

9 161. This claim is also premised on Plaintiffs' right to pursue all Labor Code
10 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
11 *USA, Inc.* (2018) 23 Cal.App.5th 745.

12 162. Plaintiffs have sent their written notice to the Labor Workforce
13 Development Agency (LWDA) and Defendants of the specific sections of the
14 California Labor Code Defendants violated and continue to violate.

15 163. Plaintiffs will file an amended complaint once they have exhausted their
16 administrative remedies and are entitled to pursue claims and remedies as authorized
17 by PAGA.

18 164. Pursuant to Labor Code § 2699, any provision of the Labor Code that
19 provides for a civil penalty to be assessed and collected by the LWDA or any of its
20 departments, divisions, commissions, boards, agencies or employees for violation of
21 the code may, as an alternative, be recovered through a civil action brought by an
22 aggrieved employee on behalf of himself or herself and other current or former
23 employees pursuant to the procedures specified in Labor Code § 2699.3.

24 165. Plaintiffs are informed and believe, and based thereon allege, that
25 because of the acts alleged above and Defendants' violations of the Labor Code
26 provisions alleged herein, Plaintiffs are entitled to penalties under Labor Code §§
27 2698 and 2699.

28 166. Plaintiffs are "aggrieved employees" because Plaintiffs were employed

1 by the alleged violator and had one or more of the alleged violations committed
2 against Plaintiffs, and therefore are properly suited to represent the interests of other
3 current and former Represented Employees.

4 167. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
5 penalties for violating Labor Code subdivision (k) of Section 96, Sections 98.6,
6 201.5, 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and
7 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3,
8 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section
9 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403,
10 subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551,
11 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970,
12 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the
13 applicable Wage Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290,
14 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1,
15 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of
16 Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5,
17 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735,
18 1777.5, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800,
19 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310,
20 6311, and 6399.7.

21 168. Labor Code § 558 establishes a civil penalty as follows: Any employer
22 or other person acting on behalf of an employer who violates, or causes to be
23 violated, a section of this chapter or any provision regulating hours and days of work
24 in any order of the Industrial Welfare Commission (including the “Hours and Days of
25 Work” section of the Wage Order) shall be subject to a civil penalty of (1) for any
26 initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
27 for which the employee was underpaid in addition to an amount sufficient to recover
28 underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for

1 each underpaid employee for each pay period for which the employee was underpaid
2 in addition to an amount sufficient to recover underpaid wages; and (3) wages
3 recovered pursuant to this section shall be paid to the affected employee.

4 169. Plaintiffs seek penalties for Defendants' conduct as alleged herein as
5 permitted by law.

6 170. Pursuant to Labor Code § 2698, *et seq.*, Plaintiffs seek to recover
7 attorney's fees, costs, civil penalties, and wages on behalf of Plaintiff and other
8 current and former Represented Employees as alleged herein in an amount to be
9 shown according to proof at trial and within the jurisdictional limits of this Court.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 12 1. An order that this action may proceed and be maintained as a class action;
- 13 2. For appointment of Plaintiff CRAFT as the representative of the Class;
- 14 3. For appointment of Plaintiffs' counsel as Class Counsel;
- 15 4. For disgorgement through restitution of all ill-gotten and/or ill-gained
16 profits, including unpaid wages and/or penalties to Plaintiff and/or the Class
17 and/or Aggrieved Employees, resulting from Defendants' unfair business
18 practices pursuant to Business and Professions Code §§ 17200-05;
- 19 5. For special and general damages;
- 20 6. That the Court find that Defendants' violations of the Labor Code
21 violations alleged in this Complaint were willful;
- 22 7. For all remedies available to the Plaintiffs under the Labor Code and the
23 applicable Industrial Welfare Commission Order including but not limited to Wage
24 Order Number 4-2001 via § 2698, *et seq.* including an award of attorneys' fees, costs,
25 interest, liquidated damages, damages, and penalties according to proof to the extent
26 permitted by law;
- 27 8. For maximum civil penalties available under the Labor Code and
28 applicable Wage Order as described more particularly in this Complaint,

1 representative PAGA claims as set forth in Labor Code § 558;

2 9. That Plaintiff and/or Aggrieved Employees be awarded reasonable
3 attorneys' fees where available by law, including but not limited to pursuant to Labor
4 Code §§ 2698, *et seq.*, Code of Civil Procedure § 1021.5, and/or other applicable
5 laws; and

6 10. For such other and further relief as this Court may deem proper and
7 just.

8 Dated: September 23, 2021

The Law Office of Thomas D. Rutledge

9
10 By: *Thomas D. Rutledge*
11 Thomas D. Rutledge, Esq.
12 Attorneys for Plaintiffs
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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, THOMAS D. RUTLEDGE, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 113 West G Street, Suite 231, San Diego, California 92101.

On September 23, 2021, I served the foregoing document(s) described as:

FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows: **See Attached List.**

☒ (BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence was deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in San Diego, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☒ (BY E-FILE EMAIL) I served the foregoing document by efile email using a court approved third party to the above mentioned.

☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

☐ (BY FACSIMILE) I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed September 23, 2021, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/THOMAS D. RUTLEDGE
THOMAS D. RUTLEDGE

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