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13 Attorneys for Plaintiff

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

MAY 04 2021

Sherri L. Galt, Executive Office/Clerk
By: Maisha Pryor, Deputy

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF LOS ANGELES**

16 **QUAID DANIELS**, on behalf of himself and
17 on behalf of all persons similarly situated,

18 Plaintiff,

19 v.

20 **AVMC, LLC dba TOYOTA OF**
21 **LANCASTER**, a California limited liability
22 company; and **DOES 1-50, Inclusive**,

23 Defendants.

Case No: 21STCV07885

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

1) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 *et seq.*]

24 Plaintiff **QUAID DANIELS**, an individual, ("PLAINTIFF"), on behalf of the people of the
25 State of California and as "aggrieved employees" acting as a private attorney general under the
26 Labor Code Private Attorney General Action of 2004, § 2699, *et seq.* ("PAGA") only, alleges on
27 information and belief, except for his own acts and knowledge which are based on personal
28 knowledge, the following:

PRELIMINARY ALLEGATIONS

1. PLAINTIFF brings this action against **AVMC, LLC dba TOYOTA OF**
LANCASTER ("DEFENDANT" or "DEFENDANTS") seeking only to recover PAGA civil
penalties for herself, and on behalf of all current and former aggrieved employees that worked
for DEFENDANT. PLAINTIFF does not seek to recover anything other than penalties as
permitted by California Labor Code § 2699. To the extent that statutory violations are

VIA FAX

1 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
2 damages for those violations in this action, but simply the civil penalties permitted by California
3 Labor Code § 2699. Notwithstanding, PLAINTIFF is not abandoning his right to pursue her
4 individual claims for, inter alia, Defendant's alleged wage violations, and/or general or special
5 damages arising from those violations, and she fully intends to, at a future date, pursue claims
6 for those individual claims and damages.

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

10 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
11 DEFENDANTS' violations under PAGA and solely for the relief as permitted by PAGA – that
12 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
13 complaint should be construed as attempting to obtain any relief that would not be available in a
14 PAGA-only action.

15 4. Defendant AVMC, LLC dba TOYOTA OF LANCASTER ("DEFENDANT" or
16 "Defendant") is a California Limited Liability Company and at all relevant times mentioned
17 herein conducted and continues to conduct substantial and regular business throughout
18 California.

19 5. DEFENDANT, owns and operates car dealerships in the Los Angeles County.

20 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
21 employee entitled to minimum wages and meal and rest periods from February of 2020 to
22 October of 2020.

23 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
24 the requirements and exhaust the administrative procedures under the Private Attorney General
25 Act, bring this Representative Action on behalf of the State of California with respect to himself
26 and all individuals who are or previously were employed by DEFENDANT in California (the
27 "AGGRIEVED EMPLOYEES") during the PAGA PERIOD, brings this representative action
28 pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S violation of
California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512, 558, 1194, 1197, 1197.1,

1 2802 and the applicable Wage Order. Based upon the foregoing, PLAINTIFF and all
2 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §
3 2699, *et seq.*

4 8. The true names and capacities, whether individual, corporate, subsidiary,
5 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
6 unknown to PLAINTIFF who therefore sue these Defendants by such fictitious names pursuant
7 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
8 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
9 PLAINTIFFS are informed and believes, and based upon that information and belief allege, that
10 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
11 responsible in some manner for one or more of the events and happenings that proximately
12 caused the injuries and damages hereinafter alleged

13 9. The agents, servants and/or employees of the Defendants and each of them acting
14 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
15 agent, servant and/or employee of the Defendants, and personally participated in the conduct
16 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
17 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
18 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
19 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
20 Defendants' agents, servants and/or employees.

21 **THE CONDUCT**

22 10. During the PAGA PERIOD, DEFENDANT failed to provide all the legally
23 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
24 required by the applicable Wage Order and Labor Code. The nature of the work performed by
25 PLAINTIFF and AGGRIEVED EMPLOYEES did not prevent these employees from being
26 relieved of all of their duties for the legally required off-duty meal periods. DEFENDANT'S
27 meal period policies and practices were unlawful because PLAINTIFF and other AGGRIEVED
28 EMPLOYEES were far too over-booked and overworked to take a timely off-duty thirty (30)

1 minute meal period. As a result of their rigorous work schedules, PLAINTIFF and other
2 AGGRIEVED EMPLOYEES were often not fully relieved of duty by DEFENDANT for their
3 meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the
4 AGGRIEVED EMPLOYEES with legally required meal breaks prior to their fifth (5th) hour of
5 work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other
6 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
7 and in accordance with DEFENDANT's strict corporate policy and practice.

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

14 12. In addition, because of DEFENDANT's commission/bonus pay plan,
15 DEFENDANT failed to compensate PLAINTIFF and AGGRIEVED EMPLOYEES for their
16 rest periods as required by the applicable Wage Order and Labor Code. DEFENDANT did not
17 have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other
18 AGGRIEVED EMPLOYEES. As a result, DEFENDANT's failure to provide PLAINTIFF and
19 the AGGRIEVED EMPLOYEES with all the legally required paid rest periods is evidenced by
20 DEFENDANT's business records.

21 13. On numerous occasions, PLAINTIFF and other CALIFORNIA CLASS
22 Members were required to work while not clocked in. DEFENDANT maintained a company-
23 wide policy of refusing to pay AGGRIEVED EMPLOYEES, like PLAINTIFF, for all hours
24 worked. Specifically, DEFENDANT maintained a company-wide pattern and practice of
25 altering employees' timecards to eliminate numerous hours worked. As a result, DEFENDANT
26 failed to compensate PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours
27 worked.

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

11 15. From time to time, when DEFENDANT did not accurately record PLAINTIFF'
12 and other AGGRIEVED EMPLOYEES' missed meal and rest breaks and/or also failed to pay
13 the proper minimum wages, the wage statements issued to PLAINTIFF and other AGGRIEVED
14 EMPLOYEES by DEFENDANT violated California law, and in particular, Labor Code Section
15 226(a). Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue
16 to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
17 Code 226 *et seq.*

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

1 17. In the course of their employment PLAINTIFF and other AGGRIEVED
2 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
3 cellular phones as a result of and in furtherance of their job duties as employees for
4 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
5 associated with the use of their personal cellular phones for DEFENDANT's benefit.
6 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required by
7 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the
8 course of their employment with DEFENDANT the PLAINTIFF and other AGGRIEVED
9 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
10 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit of
11 DEFENDANT.

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

21 19. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
22 required off-duty meal breaks to him and paid rest periods to him as required by the applicable
23 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for his missed
24 meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent him
25 from being relieved of all of his duties for the legally required off-duty meal periods. Further,
26 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday
27 in which PLAINTIFF were required by DEFENDANT to work ten (10) hours of work.
28 Moreover, DEFENDANT failed to separately compensate PLAINTIFF for his paid 10-minute

1 rest breaks despite paying PLAINTIFF on a commission-based compensation plan. As a result,
2 DEFENDANT’S failure to provide PLAINTIFF with the legally required second off-duty meal
3 period is evidenced by DEFENDANT’s business records. From time to time, and as a result of
4 DEFENDANT not accurately recording all missed meal and rest periods, failure to separately
5 compensate him for his rest breaks, and failing to pay minimum wages due for all time worked,
6 the wage statements issued to PLAINTIFF by DEFENDANT violated California law, and in
7 particular, Labor Code Section 226(a). DEFENDANT also failed to pay PLAINTIFF all earned
8 bonuses that PLAINTIFF was entitled to during his employment with DEFENDANT. To date,
9 DEFENDANT has yet to pay PLAINTIFF all of his wages due to him and all premiums due to
10 him for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages
11 owed to him under California Labor Code Section 203. The amount in controversy for
12 PLAINTIFF individually does not exceed the sum or value of \$75,000..

13 **JURISDICTION AND VENUE**

14 20. This Court has jurisdiction over this Action pursuant to California Code of Civil
15 Procedure, Section 410.10.

16 21. Venue is proper in this Court pursuant to California Code of Civil Procedure,
17 Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times
18 maintained offices and facilities in this County and/or conducts substantial business in this
19 County, and (ii) committed the wrongful conduct herein alleged in this County against members
20 of the AGGRIEVED EMPLOYEES.

21 **FIRST CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 2698 et seq.)**

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

25 22. PLAINTIFF reallege and incorporates by this reference, as though fully set forth
26 herein, the prior paragraphs of this Complaint.

27 23. PAGA is a mechanism by which the State of California itself can enforce state
28 labor laws through the employee suing under the PAGA who does so as the proxy or agent of

1 the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
2 fundamentally a law enforcement action designed to protect the public and not to benefit private
3 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
4 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
5 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
6 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
7 Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be
8 subject to arbitration.

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

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

23 26. The policies, acts and practices heretofore described were and are an unlawful
24 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
25 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
26 minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal
27 and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
28 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,

1 including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512, 558,
2 1194, 1197, 1197.1, 2802, and the applicable Industrial Wage Order(s), and thereby gives rise to
3 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
4 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
5 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
6 the other AGGRIEVED EMPLOYEES.

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

15
16 **PRAYER FOR RELIEF**

17 WHEREFORE, PLAINTIFFS pray for a judgment against each Defendants, jointly and
18 severally, as follows:

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

- 21 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
22 General Act of 2004
23 a. An award of interest, including prejudgment interest at the legal rate;
24 b. Such other and further relief as the Court deems just and equitable; and

25 //

26 //

27 //

28 //

1 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the
2 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194
3 and/or §1197.

4 DATED: April 30, 2021

5 **ZAKAY LAW GROUP, APLC**

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8 By: _____
9 Shani O. Zakay
10 Attorney for Plaintiffs
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EXHIBIT 1



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December 18, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

AVMC, LLC dba Toyota of Lancaster
c/o Mark Feldman
4490 Stevens Creek Blvd
San Jose, CA 95129
Via U.S. Certified Mail with Return Receipt

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/Madam:

Our offices represent Plaintiff Quaid Daniels (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against AVMC, LLC dba Toyota of Lancaster, a California Corporation. (“Defendant”). Plaintiff was employed by Defendant in California from February 2020 to October 2020 as a salesperson entitled to the legally required meal and rest breaks. Defendant, 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. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant 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, 226(a), 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5 violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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 exempt and non-exempt 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 Statute 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,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

QUAID DANIELS, on behalf of himself and
on behalf of all persons similarly situated,

Plaintiff,

v.

AVMC, LLC dba TOYOTA OF
LANCASTER, a California limited liability
company; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 3) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 5) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO TIMELY PAY WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203; and
- 8) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiff QUAID DANIELS, an individual, (“PLAINTIFF”), on behalf of himself and all
2 other similarly situated current and former employees, allege on information and belief, except for
3 his own acts and knowledge which are based on personal knowledge, the following:

4 **THE PARTIES**

5 1. Defendant AVMC, LLC dba TOYOTA OF LANCASTER (“DEFENDANT”) is
6 a California limited liability company and at all relevant times mentioned herein conducted and
7 continues to conduct substantial and regular business throughout California.

8 2. DEFENDANT owns and operates a car dealership in Lancaster, California

9 3. PLAINTIFF was employed by DEFENDANT in California from February of
10 2020 to October of 2020 and was at all times during his employment with DEFENDANT
11 entitled to be paid minimum wages and entitled to the legally required off-duty meal periods.
12 PLAINTIFF was also required to be paid for his rest periods as DEFENDANT paid
13 PLAINTIFF only commissions wages for certain pay periods. DEFENDANT did not separately
14 compensate PLAINTIFF for his rest periods.

15 4. PLAINTIFF bring this Class Action on behalf of himself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT in California
17 and paid on a draw vs. commission compensation scheme (the “CALIFORNIA CLASS”) at any
18 time during the period beginning on the date four (4) years prior to the filing of this Complaint
19 and ending on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”).
20 The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under
21 five million dollars (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
25 which failed to lawfully compensate these employees for all their missed meal breaks and
26 unpaid rest periods. DEFENDANT’s uniform policy and practice alleged herein is an unlawful,
27 unfair and deceptive business practice whereby DEFENDANT retained and continues to retain
28 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and

1 the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
2 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the
3 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
4 current unlawful conduct, and all other appropriate legal and equitable relief.

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

14 7. The agents, servants and/or employees of the Defendants and each of them acting
15 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
16 agent, servant and/or employee of the Defendants, and personally participated in the conduct
17 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
18 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
19 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
20 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
21 Defendants' agents, servants and/or employees.

22 **THE CONDUCT**

23 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
24 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS
25 Members as required by the applicable Wage Order and Labor Code. The nature of the work
26 performed by PLAINTIFF and CALIFORNIA CLASS MEMBERS did not prevent these
27 employees from being relieved of all of their duties for the legally required off-duty meal
28 periods. DEFENDANT'S meal period policies and practices were unlawful because

1 PLAINTIFF and other CALIFORNIA CLASS Members were far too over-booked and
2 overworked to take a timely off-duty thirty (30) minute meal period. As a result of their
3 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often
4 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
5 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
6 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
7 DEFENDANT's business records. As a result, PLAINTIFF and other members of the
8 CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
9 accordance with DEFENDANT's strict corporate policy and practice.

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

16 10. In addition, because of DEFENDANT's commission pay plan described herein,
17 DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA CLASS Members for their
18 rest periods as required by the applicable Wage Order and Labor Code. DEFENDANT did not
19 have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other
20 CALIFORNIA CLASS Members. As a result, DEFENDANT's failure to provide PLAINTIFF
21 and the CALIFORNIA CLASS Members with all the legally required paid rest periods is
22 evidenced by DEFENDANT's business records.

23 11. On numerous occasions, PLAINTIFF and other CALIFORNIA CLASS
24 Members were required to work while not clocked in. DEFENDANT maintained a company-
25 wide policy of refusing to pay CALIFORNIA CLASS Members, like PLAINTIFF, for all hours
26 worked. Specifically, DEFENDANT maintained a company-wide pattern and practice of
27 altering employees' timecards to eliminate numerous hours worked. As a result, DEFENDANT
28

1 failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members wages for all hours
2 worked.

3 12. Under California law, every employer shall pay to each employee, on the
4 established payday for the period involved, not less than the applicable minimum wage for all
5 hours worked in the payroll period, whether the remuneration is measured by time, piece,
6 commission, or otherwise. Hours worked is defined in the applicable Wage Order as “the time
7 during which an employee is subject to the control of an employer, and includes all the time the
8 employee is suffered or permitted to work, whether or not required to do so. Here, PLAINTIFF
9 and CALIFORNIA CLASS Members were entitled to separate hourly compensation for time
10 spent performing all non-sales related tasks directed by DEFENDANT during their work shifts,
11 including, but not limited to, weekly sales meetings, and are entitled to one hour of pay for their
12 rest periods.

13 13. From time to time, when DEFENDANT did not accurately record PLAINTIFF’
14 and other CALIFORNIA CLASS Members’ missed meal and rest breaks and/or also failed to
15 pay the proper minimum wages, the wage statements issued to PLAINTIFF and other
16 CALIFORNIA CLASS Members by DEFENDANT violated California law, and in particular,
17 Labor Code Section 226(a). Aside, from the violations listed above in this paragraph,
18 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
19 requirements under California Labor Code 226 *et seq.*

20 14. DEFENDANT as a matter of corporate policy, practice and procedure,
21 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and
22 the other CALIFORNIA CLASS Members for required business expenses incurred by the
23 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
24 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
25 are required to indemnify employees for all expenses incurred in the course and scope of their
26 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
27 her employee for all necessary expenditures or losses incurred by the employee in direct
28 consequence of the discharge of his or her duties, or of his or her obedience to the directions of

1 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
2 believed them to be unlawful."

3 15. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
4 Members as a business expense, were required by DEFENDANT to use their own personal
5 cellular phones as a result of and in furtherance of their job duties as employees for
6 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
7 associated with the use of their personal cellular phones for DEFENDANT's benefit.
8 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
9 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the
10 course of their employment with DEFENDANT the PLAINTIFF and other members of the
11 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
12 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
13 benefit of DEFENDANT.

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

24 17. By reason of this uniform conduct applicable to PLAINTIFF and all
25 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
26 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
27 (the "UCL"), by engaging in a company-wide policy and procedure which failed to accurately
28 calculate and record all missed meal breaks and failed to pay PLAINTIFF and CALIFORNIA

1 CLASS Members for rest periods as required by California law. The proper recording of these
2 employees' missed meal and rest breaks is the DEFENDANT's burden. As a result of
3 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
4 failed to properly calculate and/or pay all required compensation for work performed by the
5 members of the CALIFORNIA CLASS and violated the California Labor Code and regulations
6 promulgated thereunder as herein alleged.

7 18. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
8 required off-duty meal breaks to him and paid rest periods to him as required by the applicable
9 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for his missed
10 meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent him
11 from being relieved of all of his duties for the legally required off-duty meal periods. Further,
12 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday
13 in which PLAINTIFF were required by DEFENDANT to work ten (10) hours of work. As a
14 result, DEFENDANT'S failure to provide PLAINTIFF with the legally required second off-duty
15 meal period is evidenced by DEFENDANT's business records. From time to time, and as a
16 result of DEFENDANT not accurately recording all missed meal and rest periods, and failing to
17 pay minimum wages due for all time worked, the wage statements issued to PLAINTIFF by
18 DEFENDANT violated California law, and in particular, Labor Code Section 226(a).
19 DEFENDANT also failed to pay PLAINTIFF all earned bonuses that PLAINTIFF was entitled
20 to during his employment with DEFENDANT. To date, DEFENDANT has yet to pay
21 PLAINTIFF all of his wages due to him and all premiums due to him for missed meal and rest
22 breaks and DEFENDANT has failed to pay any penalty wages owed to him under California
23 Labor Code Section 203. The amount in controversy for PLAINTIFF individually does not
24 exceed the sum or value of \$75,000.

25 **JURISDICTION AND VENUE**

26 19. This Court has jurisdiction over this Action pursuant to California Code of Civil
27 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
28

1 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees
2 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

3 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,
4 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
5 DEFENDANT (i) currently maintain and at all relevant times maintained offices and facilities
6 in this County and/or conduct substantial business in this County, and (ii) committed the
7 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS
8 and CALIFORNIA LABOR SUB-CLASS.

9 **THE CALIFORNIA CLASS**

10 21. PLAINTIFF bring the First Cause of Action for Unfair, Unlawful and Deceptive
11 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
12 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
13 individuals who are or previously were employed by DEFENDANT in California and paid on a
14 draw vs. commission compensation scheme (the "CALIFORNIA CLASS") at any time during
15 the period beginning on the date four (4) years prior to the filing of this Complaint and ending
16 on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
17 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
18 dollars (\$5,000,000.00).

19 22. To the extent equitable tolling operates to toll claims by the CALIFORNIA
20 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
21 accordingly.

22 23. DEFENDANT, as a matter of company policy, practice and procedure, and in
23 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
24 requirements, and the applicable provisions of California law, intentionally, knowingly, and
25 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly record
26 missed meal and rest breaks and all time worked by PLAINTIFF and the other members of the
27 CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required
28 employees to perform this work and permitted or suffered to permit this work.

1 24. DEFENDANT has the legal burden to establish that each and every
2 CALIFORNIA CLASS Member was paid the correct wages for all time worked. The
3 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to
4 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
5 or practice to ensure that each and every CALIFORNIA CLASS Member is paid for all missed
6 meal and rest breaks, so as to satisfy their burden. This common business practice applicable to
7 each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
8 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
9 (the “UCL”) as causation, damages, and reliance are not elements of this claim.

10 25. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
11 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
12 employee for all missed meal breaks, as required by California Labor Code.

13 26. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
14 CLASS Members is impracticable.

15 27. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
16 California law by:

- 17 a. Committing an act of unfair competition in violation of the California Unfair
18 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
19 provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
20 all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the
21 legally required paid rest breaks,
- 22 b. Committing an act of unfair competition in violation of the California Unfair
23 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
24 unfairly and deceptively having in place company policies, practices and
25 procedures that uniformly denied PLAINTIFF and the members of the
26 CALIFORNIA CLASS the correct minimum wages and otherwise violated
27 applicable law; and,
- 28

- 1 c. Committing an act of unfair competition in violation of the California Unfair
2 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.
3 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA
4 CLASS members with necessary expenses incurred in the discharge of their job
5 duties

6 28. The Class Action meets the statutory prerequisites for the maintenance of a Class
7 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 8 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
9 joinder of all such persons is impracticable and the disposition of their claims as
10 a class will benefit the parties and the Court;
- 11 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
12 raised in this Complaint are common to the CALIFORNIA CLASS will apply
13 uniformly to every member of the CALIFORNIA CLASS;
- 14 c. The claims of the representative PLAINTIFF are typical of the claims of each
15 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
16 of the CALIFORNIA CLASS, was paid on a draw vs. commission compensation
17 scheme who was subjected to the DEFENDANT's deceptive practice and policy
18 which failed to provide the legally required meal and rest periods to the
19 CALIFORNIA CLASS and thereby systematically underpaid compensation to
20 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic
21 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
22 members of the CALIFORNIA CLASS were and are similarly or identically
23 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
24 misconduct engaged in by DEFENDANT; and,
- 25 d. The representative PLAINTIFF will fairly and adequately represent and protect
26 the interest of the CALIFORNIA CLASS, and have retained counsel who are
27 competent and experienced in Class Action litigation. There are no material
28 conflicts between the claims of the representative PLAINTIFF and the members

1 of the CALIFORNIA CLASS that would make class certification inappropriate.
2 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
3 CALIFORNIA CLASS Members.

4 29. In addition to meeting the statutory prerequisites to a Class Action, this action is
5 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

6 a. Without class certification and determination of declaratory, injunctive, statutory
7 and other legal questions within the class format, prosecution of separate actions
8 by individual members of the CALIFORNIA CLASS will create the risk of:

9 i. Inconsistent or varying adjudications with respect to individual members
10 of the CALIFORNIA CLASS which would establish incompatible
11 standards of conduct for the parties opposing the CALIFORNIA CLASS;
12 and/or;

13 ii. Adjudication with respect to individual members of the CALIFORNIA
14 CLASS which would as a practical matter be dispositive of interests of
15 the other members not party to the adjudication or substantially impair or
16 impede their ability to protect their interests.

17 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
18 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
19 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
20 DEFENDANT uniformly failed to pay all wages due to members of the
21 CALIFORNIA CLASS as required by law;

22 i. With respect to the First Cause of Action, the final relief on behalf of the
23 CALIFORNIA CLASS sought does not relate exclusively to restitution
24 because through this claim PLAINTIFF seek declaratory relief holding
25 that the DEFENDANT'S policy and practices constitute unfair
26 competition, along with declaratory relief, injunctive relief, and incidental
27 equitable relief as may be necessary to prevent and remedy the conduct
28 declared to constitute unfair competition;

1 c. Common questions of law and fact exist as to the members of the CALIFORNIA
2 CLASS, with respect to the practices and violations of California law as listed
3 above, and predominate over any question affecting only individual
4 CALIFORNIA CLASS Members, and a Class Action is superior to other
5 available methods for the fair and efficient adjudication of the controversy,
6 including consideration of:

7 i. The interests of the members of the CALIFORNIA CLASS in
8 individually controlling the prosecution or defense of separate actions in
9 that the substantial expense of individual actions will be avoided to
10 recover the relatively small amount of economic losses sustained by the
11 individual CALIFORNIA CLASS Members when compared to the
12 substantial expense and burden of individual prosecution of this
13 litigation;

14 ii. Class certification will obviate the need for unduly duplicative litigation
15 that would create the risk of:

16 1. Inconsistent or varying adjudications with respect to individual
17 members of the CALIFORNIA CLASS, which would establish
18 incompatible standards of conduct for the DEFENDANT; and/or;

19 2. Adjudications with respect to individual members of the
20 CALIFORNIA CLASS would as a practical matter be dispositive
21 of the interests of the other members not parties to the
22 adjudication or substantially impair or impede their ability to
23 protect their interests;

24 iii. In the context of wage litigation, because a substantial number of
25 individual CALIFORNIA CLASS Members will avoid asserting their
26 legal rights out of fear of retaliation by DEFENDANT, which may
27 adversely affect an individual's job with DEFENDANT or with a
28

subsequent employer, the Class Action is the only means to assert their claims through a representative; and

iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

30. The Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices were uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;

- 1 f. There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of the
3 CALIFORNIA CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
5 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
6 respect to the CALIFORNIA CLASS as a whole;
- 7 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
8 business records of DEFENDANT; and
- 9 i. Class treatment provides manageable judicial treatment calculated to bring an
10 efficient and rapid conclusion to all litigation of all wage and hour related claims
11 arising out of the conduct of DEFENDANT as to the members of the
12 CALIFORNIA CLASS.

13 31. DEFENDANT maintains records from which the Court can ascertain and
14 identify by job title each of DEFENDANT'S employees who as have been systematically,
15 intentionally and uniformly subjected to DEFENDANT'S company policy, practices and
16 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
17 any additional job titles of similarly situated employees when they have been identified.

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 32. PLAINTIFF further bring the Second, Third, Fourth Fifth, Sixth, and Seventh,
20 causes of Action on behalf of a California sub-class, defined as all members of the
21 CALIFORNIA CLASS who are or previously were employed by Defendant Larry Green
22 Chrysler Jeep Dodge, Inc. and/or Larry Green Ford Inc. and/or Larry Green Auto Center Blythe
23 Inc. in California and paid on a draw vs. commission compensation scheme in California (the
24 "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to
25 the filing of the complaint and ending on the date as determined by the Court (the
26 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
27 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
28 Members is under five million dollars (\$5,000,000.00).

1 33. DEFENDANT, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and
4 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
5 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA
6 LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this work, required
7 employees to perform this work and permitted or suffered to permit this work. DEFENDANT
8 has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members wages to which
9 these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To
10 the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
11 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
12 accordingly.

13 34. DEFENDANT maintains records from which the Court can ascertain and
14 identify by name and job title, each of DEFENDANT’s employees who have been
15 systematically, intentionally and uniformly subjected to DEFENDANT’s company policy,
16 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint
17 to include any additional job titles of similarly situated employees when they have been
18 identified.

19 35. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
20 CALIFORNIA LABOR SUB-CLASS Members is impracticable

21 36. Common questions of law and fact exist as to members of the CALIFORNIA
22 LABOR SUB-CLASS, including, but not limited, to the following:

- 23 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
24 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
25 missed meal and rest breaks in violation of the California Labor Code and
26 California regulations and the applicable California Wage Order;

- b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- c. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- d. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- e. Whether DEFENDANT's conduct was willful.

37. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

- a. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee, the total amount of hours worked, and the correct legal entity that was their employer;
- b. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment,
- c. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- d. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties;

- 1 e. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
2 and the other members of the CALIFORNIA CLASS with all legally required
3 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
4 paid rest breaks.

5 38. This Class Action meets the statutory prerequisites for the maintenance of a
6 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 7 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
8 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
9 is impracticable and the disposition of their claims as a class will benefit the
10 parties and the Court;
- 11 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
12 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
13 CLASS and will apply uniformly to every member of the CALIFORNIA
14 LABOR SUB-CLASS;
- 15 c. The claims of the representative PLAINTIFF are typical of the claims of each
16 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
17 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
18 employee paid on an hourly basis who was subjected to the DEFENDANT'S
19 practice and policy which failed to pay the correct amount of wages due to the
20 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
21 a result of DEFENDANT'S employment practices. PLAINTIFF and the
22 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
23 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
24 of misconduct engaged in by DEFENDANT; and
- 25 d. The representative PLAINTIFF will fairly and adequately represent and protect
26 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
27 counsel who are competent and experienced in Class Action litigation. There are
28 no material conflicts between the claims of the representative PLAINTIFF and

1 the members of the CALIFORNIA LABOR SUB-CLASS that would make class
2 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
3 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
4 Members.

5 39. In addition to meeting the statutory prerequisites to a Class Action, this action is
6 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 7 a. Without class certification and determination of declaratory, injunctive, statutory
8 and other legal questions within the class format, prosecution of separate actions
9 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
10 the risk of:
- 11 i. Inconsistent or varying adjudications with respect to individual members
12 of the CALIFORNIA LABOR SUB-CLASS which would establish
13 incompatible standards of conduct for the parties opposing the
14 CALIFORNIA LABOR SUB-CLASS; or
 - 15 ii. Adjudication with respect to individual members of the CALIFORNIA
16 LABOR SUB-CLASS which would as a practical matter be dispositive of
17 interests of the other members not party to the adjudication or
18 substantially impair or impede their ability to protect their interests.
- 19 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
20 refused to act on grounds generally applicable to the CALIFORNIA LABOR
21 SUB-CLASS, making appropriate class-wide relief with respect to the
22 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
23 uniformly fail to pay all wages due. Including the correct wages for all time
24 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required
25 by law;
- 26 c. Common questions of law and fact predominate as to the members of the
27 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
28 violations of California Law as listed above, and predominate over any question

1 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
2 Class Action is superior to other available methods for the fair and efficient
3 adjudication of the controversy, including consideration of:

4 i. The interests of the members of the CALIFORNIA LABOR SUB-
5 CLASS in individually controlling the prosecution or defense of separate
6 actions in that the substantial expense of individual actions will be
7 avoided to recover the relatively small amount of economic losses
8 sustained by the individual CALIFORNIA LABOR SUB-CLASS
9 Members when compared to the substantial expense and burden of
10 individual prosecution of this litigation;

11 ii. Class certification will obviate the need for unduly duplicative litigation
12 that would create the risk of:

13 1. Inconsistent or varying adjudications with respect to individual
14 members of the CALIFORNIA LABOR SUB-CLASS, which
15 would establish incompatible standards of conduct for the
16 DEFENDANT; and/or,

17 2. Adjudications with respect to individual members of the
18 CALIFORNIA LABOR SUB-CLASS would as a practical matter
19 be dispositive of the interests of the other members not parties to
20 the adjudication or substantially impair or impede their ability to
21 protect their interests;

22 iii. In the context of wage litigation because a substantial number of
23 individual CALIFORNIA LABOR SUB-CLASS Members will avoid
24 asserting their legal rights out of fear of retaliation by DEFENDANT,
25 which may adversely affect an individual's job with DEFENDANT or
26 with a subsequent employer, the Class Action is the only means to assert
27 their claims through a representative; and,
28

1 iv. A class action is superior to other available methods for the fair and
2 efficient adjudication of this litigation because class treatment will
3 obviate the need for unduly and unnecessary duplicative litigation that is
4 likely to result in the absence of certification of this action pursuant to
5 Cal. Code of Civ. Proc. § 382.

6 40. This Court should permit this action to be maintained as a Class Action pursuant
7 to Cal. Code of Civ. Proc. § 382 because:

- 8 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
9 CLASS predominate over any question affecting only individual CALIFORNIA
10 LABOR SUB-CLASS Members;
- 11 b. A Class Action is superior to any other available method for the fair and efficient
12 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
13 CLASS because in the context of employment litigation a substantial number of
14 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
15 their rights individually out of fear of retaliation or adverse impact on their
16 employment;
- 17 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
18 it is impractical to bring all members of the CALIFORNIA LABOR SUB-
19 CLASS before the Court;
- 20 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
21 not be able to obtain effective and economic legal redress unless the action is
22 maintained as a Class Action;
- 23 e. There is a community of interest in obtaining appropriate legal and equitable
24 relief for the acts of unfair competition, statutory violations and other
25 improprieties, and in obtaining adequate compensation for the damages and
26 injuries which DEFENDANT’S actions have inflicted upon the CALIFORNIA
27 LABOR SUB-CLASS;
- 28

- 1 f. There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of the
3 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
5 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
6 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 7 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
8 ascertainable from the business records of DEFENDANT. The CALIFORNIA
9 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were
10 employed by DEFENDANT in California during the CALIFORNIA LABOR
11 SUB-CLASS PERIOD; and
- 12 i. Class treatment provides manageable judicial treatment calculated to bring an
13 efficient and rapid conclusion to all litigation of all wage and hour related claims
14 arising out of the conduct of DEFENDANT as to the members of the
15 CALIFORNIA LABOR SUB-CLASS.

16 **FIRST CAUSE OF ACTION**

17 **UNLAWFUL BUSINESS PRACTICES**

18 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

19 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

20 41. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
22 Complaint.

23 42. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
24 Code § 17021.

25 43. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
26 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
27 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
28 competition as follows:

1 Any person who engages, has engaged, or proposes to engage in unfair competition may
2 be enjoined in any court of competent jurisdiction. The court may make such orders or
3 judgments, including the appointment of a receiver, as may be necessary to prevent the
4 use or employment by any person of any practice which constitutes unfair competition,
5 as defined in this chapter, or as may be necessary to restore to any person in interest any
6 money or property, real or personal, which may have been acquired by means of such
7 unfair competition. (Cal. Bus. & Prof. Code § 17203).

8 44. By the conduct alleged herein, DEFENDANT has engaged and continues to
9 engage in a business practice which violates California law, including but not limited to, the
10 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
11 including Sections 204, 206.5, 210, 226.7, 512, 558, 1194, 1197, 1197.1, 1198 & 2802, for
12 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
13 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
14 unfair competition, including restitution of wages wrongfully withheld.

15 45. By the conduct alleged herein, DEFENDANT'S practices were unlawful and
16 unfair in that these practices violated public policy, were immoral, unethical, oppressive
17 unscrupulous or substantially injurious to employees, and were without valid justification or
18 utility for which this Court should issue equitable and injunctive relief pursuant to Section
19 17203 of the California Business & Professions Code, including restitution of wages wrongfully
20 withheld.

21 46. By the conduct alleged herein, DEFENDANT's practices were deceptive and
22 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
23 mandated meal and rest periods and the required amount of compensation for missed meal and
24 rest periods and minimum wages due to a systematic business practice that cannot be justified,
25 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
26 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
27 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
28 wrongfully withheld.

1 47. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,
2 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFF and the
3 other members of the CALIFORNIA CLASS to be underpaid during their employment with
4 DEFENDANT.

5 48. By the conduct alleged herein, DEFENDANT’S practices were also unfair and
6 deceptive in that DEFENDANT’S uniform policies, practices and procedures failed to provide
7 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
8 members as required by Cal. Lab. Code §§ 226.7 and 512.

9 49. Therefore, PLAINTIFF demand on behalf of themselves and on behalf of each
10 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
11 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
12 for each workday in which a second off-duty meal period was not timely provided for each ten
13 (10) hours of work.

14 50. PLAINTIFF further demand on behalf of themselves and on behalf of each
15 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
16 was not timely provided as required by law.

17 51. By and through the unlawful and unfair business practices described herein,
18 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
19 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
20 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
21 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
22 to unfairly compete against competitors who comply with the law.

23 52. All the acts described herein as violations of, among other things, the Industrial
24 Welfare Commission Wage Orders, the California Code of Regulations, and the California
25 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
26 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
27 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*
28

1 53. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
2 and do, seek such relief as may be necessary to restore to them the money and property which
3 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
4 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
5 unfair business practices, including earned but unpaid wages for all time worked.

6 54. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
7 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
8 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
9 engaging in any unlawful and unfair business practices in the future.

10 55. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
11 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
12 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As
13 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
14 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
15 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
16 engage in these unlawful and unfair business practices.

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

19 **(Cal. Lab. Code §§ 226.7 & 512)**

20 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**

21 **Defendants)**

22 56. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
23 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
24 paragraphs of this Complaint.

25 57. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
26 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
27 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
28 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS

1 did not prevent these employees from being relieved of all of their duties for the legally required
2 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
3 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
4 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
5 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
6 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
7 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
8 therefore forfeited meal breaks without additional compensation and in accordance with
9 DEFENDANT's strict corporate policy and practice.

10 58. DEFENDANT further violated California Labor Code §§ 226.7 and the
11 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
12 SUB-CLASS Members who were not provided a meal period, in accordance with the applicable
13 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
14 each workday that a meal period was not provided.

15 59. As a proximate result of the aforementioned violations, PLAINTIFF and
16 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
17 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

20 **(Cal. Lab. Code §§ 226.7 & 512)**

21 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
22 **Defendants)**

23 60. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
24 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
25 paragraphs of this Complaint.

26 61. In addition, because of DEFENDANT's compensation pay plan described herein,
27 DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
28 Members for their rest periods as required by the applicable Wage Order and Labor Code.

1 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
2 PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members. As a result,
3 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
4 Members with all the legally required paid rest periods is evidenced by DEFENDANT's
5 business records. Additionally, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
6 Members were also required to work in excess of four (4) hours without being provided ten (10)
7 minute rest periods. Further, these employees were denied their first rest periods of at least ten
8 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest
9 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,
10 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
11 (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
12 were also not provided with one hour wages in lieu thereof. As a result of their rigorous work
13 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
14 periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

15 62. DEFENDANT further violated California Labor Code §§ 226.7 and the
16 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
17 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable
18 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
19 each workday that rest period was not provided.

20 63. As a proximate result of the aforementioned violations, PLAINTIFF and
21 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
22 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PAY MINIMUM WAGES**

25 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

26 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all**
27 **Defendants)**
28

1 64. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
2 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
3 paragraphs of this Complaint.

4 65. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
5 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
6 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
7 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
8 Members.

9 66. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
10 public policy, an employer must timely pay its employees for all hours worked.

11 67. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
12 commission is the minimum wage to be paid to employees, and the payment of a lesser wage
13 than the minimum so fixed is unlawful.

14 68. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
15 including minimum wage compensation and interest thereon, together with the costs of suit.

16 69. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
17 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
18 amount of time they worked, including time spent engaging in non sales related work tasks
19 while off the clock. As set forth herein, DEFENDANT's uniform policy and practice was to
20 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS.

22 70. DEFENDANT's uniform pattern of unlawful wage and hour practices
23 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
24 whole, as a result of implementing a uniform policy and practice that denied accurate
25 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS in regards to minimum wage pay.

27 71. In committing these violations of the California Labor Code, DEFENDANT
28 inaccurately calculated the correct time worked and consequently underpaid the actual time

1 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
2 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
3 benefits in violation of the California Labor Code, the Industrial Welfare Commission
4 requirements and other applicable laws and regulations.

5 72. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
7 receive the correct minimum wage compensation for their time worked for DEFENDANT.

8 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
9 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
10 than they were entitled to, constituting a failure to pay all earned wages.

11 74. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
12 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS for the true time they worked, PLAINTIFF and the other members of the
14 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
15 injury in amounts which are presently unknown to them and which will be ascertained
16 according to proof at trial.

17 75. DEFENDANT knew or should have known that PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS are under-compensated for their time
19 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
20 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy,
21 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
22 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
23 correct minimum wages for their time worked.

24 76. In performing the acts and practices herein alleged in violation of California
25 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
26 CLASS for all time worked and provide them with the requisite compensation, DEFENDANT
27 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
28 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter

disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

77. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS

(Cal. Lab. Code § 226)

(Alleged by PLAINTIFF ELIAS BARBA-REYES, PEDRO MURGUIA, and EDGARDO MARTINEZ and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

78. PLAINTIFF ELIAS BARBA-REYES, PEDRO MURGUIA, and EDGARDO MARTINEZ, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

79. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing:

- a. Gross wages earned,
- b. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of

overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,

c. the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,

d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,

e. net wages earned,

f. the inclusive dates of the period for which the employee is paid,

g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,

h. the name and address of the legal entity that is the employer, and

i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

80. When DEFENDANT did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal breaks and unpaid rest breaks and/or minimum wages owed, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately itemizes all missed meal periods incurred by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby also failed to set forth the correct wages earned by the employees. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

81. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment

1 taxes which were not properly paid to state and federal tax authorities. These damages are
2 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA
3 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
4 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
5 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
6 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
7 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

8 **SIXTH CAUSE OF ACTION**

9 **FOR FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES**

10 **(Cal. Lab. Code §§ 2802)**

11 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all**
12 **Defendants)**

13 82. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
14 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
15 paragraphs of this Complaint.

16 83. Cal. Lab. Code § 2802 provides, in relevant part, that:

17 An employer shall indemnify his or her employee for all necessary expenditures or
18 losses incurred by the employee in direct consequence of the discharge of his or her
19 duties, or of his or her obedience to the directions of the employer, even though
20 unlawful, unless the employee, at the time of obeying the directions, believed them
21 to be unlawful.

22 84. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
23 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
24 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
25 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
26 CLASS members for expenses which included, but were not limited to, costs related to using
27 their personal cellular phones all on behalf of and for the benefit of DEFENDANT.
28 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by

1 DEFENDANT to use their personal cell phones to respond to work related issues.
2 DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and
3 the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their
4 personal cellular phones for DEFENDANT within the course and scope of their employment for
5 DEFENDANT. These expenses were necessary to complete their principal job duties.
6 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation.
7 Although these expenses were necessary expenses incurred by PLAINTIFF and the
8 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and
9 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
10 expenses as an employer is required to do under the laws and regulations of California.

11 85. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
12 by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
13 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at
14 the statutory rate and costs under Cal. Lab. Code § 2802.

15 **SEVENTH CAUSE OF ACTION**

16 **FOR FAILURE TO TIMELY PAY WAGES WHEN DUE**

17 **(Cal. Lab. Code §§ 201, 202, 203)**

18 **(Alleged By PLAINTIFF BRIAN REYES, JESUS ROCHA, JONATHAN ZARATE-**
19 **ARANA, and STEVEN SALAZAR and the CALIFORNIA LABOR SUB-CLASS against all**
20 **Defendants)**

21 86. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
22 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
23 paragraphs of this Complaint.

24 87. Cal. Lab. Code § 200 provides, in relevant part, that:

25 As used in this article:(a) "Wages" includes all amounts for labor performed by
26 employees of every description, whether the amount is fixed or ascertained by the
27 standard of time, task, piece, Commission basis, or other method of calculation.(b)
28 "Labor" includes labor, work, or service whether rendered or performed under

1 contract, subcontract, partnership, station plan, or other agreement if the labor to be
2 paid for is performed personally by the person demanding payment.

3 88. Cal. Lab. Code § 201 provides, in relevant part, “that If an employer discharges
4 an employee, the wages earned and unpaid at the time of discharge are due and payable
5 immediately.”

6 89. Cal. Lab. Code § 202 provides, in relevant part, that:

7 If an employee not having a written contract for a definite period quits his or her
8 employment, his or her wages shall become due and payable not later than 72 hours
9 thereafter, unless the employee has given 72 hours previous notice of his or her
10 intention to quit, in which case the employee is entitled to his or her wages at the
11 time of quitting. Notwithstanding any other provision of law, an employee who
12 quits without providing a 72-hour notice shall be entitled to receive payment by
13 mail if he or she so requests and designates a mailing address. The date of the
14 mailing shall constitute the date of payment for purposes of the requirement to
15 provide payment within 72 hours of the notice of quitting

16 90. There was no definite term in PLAINTIFF’S or any CALIFORNIA LABOR
17 SUB-CLASS Members’ employment contract.

18 91. Cal. Lab. Code § 203 provides, in relevant part, that:

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

24 92. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
25 CLASS Members terminated and DEFENDANT has not tendered payment of all wages owed
26 as required by law.

27 93. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
28 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and

1 who have missed meal and rest breaks without being paid the legally required penalties by
2 DEFENDANT, PLAINTIFF demand up to thirty days of pay as penalty for not timely paying
3 all wages due at time of termination for all employees who terminated employment during the
4 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and statutory costs as allowed by
5 law.

6 **EIGHTH CAUSE OF ACTION**

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

8 **(Cal. Lab. Code §§ 2698 et seq.)**

9 **(Alleged by PLAINTIFF BRIAN REYES against all Defendants)**

10 94. PLAINTIFF reallege and incorporates by this reference, as though fully set forth
11 herein, the prior paragraphs of this Complaint.

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

22 96. PLAINTIFF, and such persons that may be added from time to time who satisfy
23 the requirements and exhaust the administrative procedures under the Private Attorney General
24 Act, bring this Representative Action on behalf of the State of California with respect to
25 themselves and all individuals who are or previously were employed by DEFENDANT and
26 classified as non-exempt employees in California during the time period of August 16, 2018
27 until the present (the "AGGRIEVED EMPLOYEES").
28

97. On August 16, 2019, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

98. The policies, acts and practices heretofore described were and are an unlawful business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512, 558, 1194, 1197, 1197.1, 2802, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF pray for a judgment against each Defendants, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

b. An order temporarily, preliminarily and permanently enjoining and restraining
DEFENDANT from engaging in similar unlawful conduct as set forth herein;

- c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
 - d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.
2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wage compensation due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
 - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and
 - e. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit;
 - f. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and
 - g. The wages of all terminated employees in the CALIFORNIA LABOR

SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

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

4. On all claims:

a. An award of interest, including prejudgment interest at the legal rate;

b. Such other and further relief as the Court deems just and equitable; and

c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

PLAINTIFF demand a jury trial on issues triable to a jury.

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for PLAINTIFF